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A
DIGEST
OF
HINDU LAW,
ON

CONTRACTS AND SUCCESSIONS:

WITH A
COMMENTARY
BY JAGANNÁTHA TERCAPANCHÁNANA.

Translated from the Original SANSKRIT,
BY H. T. COLEBROOKE, ESQUIRE,
JUDGE OF MIRZAPORE, RESIDENT AT THE COURT OF BERAR,
AND MEMBER OF THE SOCIETY INSTITUTED IN BENGAL FOR INQUIRING INTO
THE HISTORY, ANTIQUITIES, THE ARTS, SCIENCES
AND LITERATURE OF ASIA.

IN THREE VOLUMES.
VOL. I.

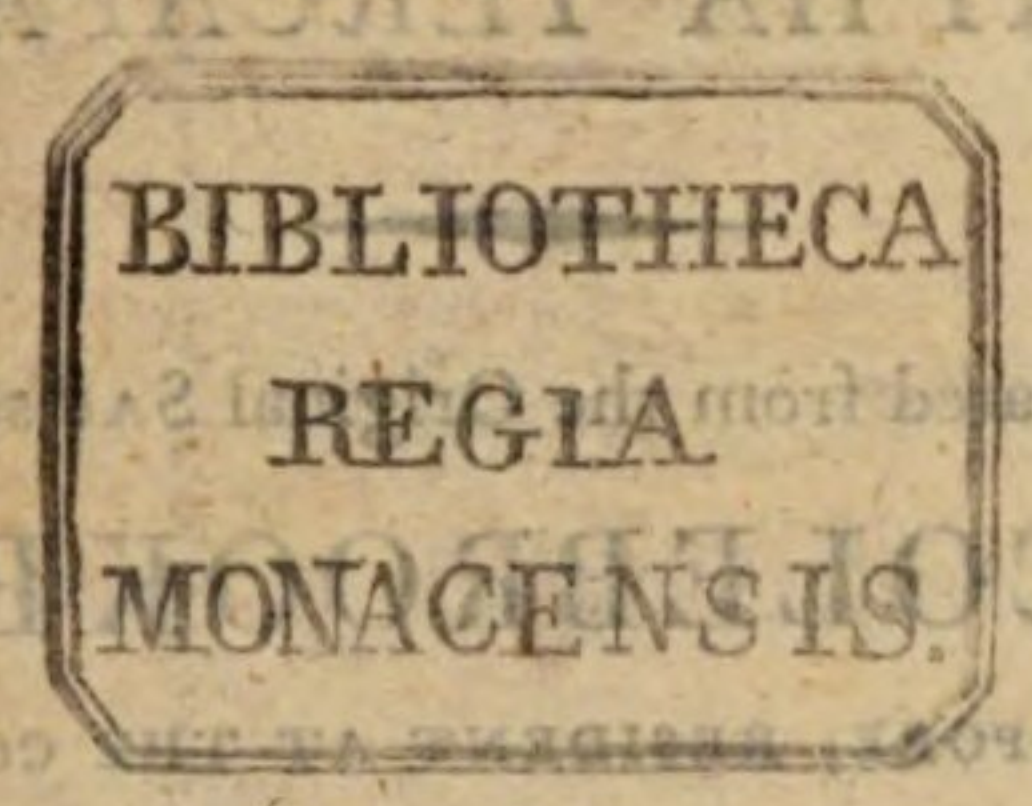
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TO
THE MEMORY OF
SIR WILLIAM JONES,
THIS TRANSLATION
OF A
DIGEST,

COMPILED UNDER HIS SUPERINTENDENCE,

IS,

WITH GREAT VENERATION,

INSCRIBED

BY

THE TRANSLATOR.

* See his *Anniversary Discourse*, &c. &c. of the Asiatic
Society, Vol. IV, p. 176.

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THE PREFACE.

THE motives for undertaking the compilation of a New Digest of Indian Law, are so well unfolded in a letter addressed by the late Sir WILLIAM JONES to the Supreme Council of Bengal, that it will suffice to extract therefrom the sentiments expressed by that venerable Magistrate. It must ever be regretted, that the Public has lost, by his premature death, a translation, from his pen, of a Digest compiled under his direction, and an introductory Discourse, for which he had prepared curious and ample materials*. The loss is irreparable; for, no other joins to a competent knowledge of Oriental Languages, that legislative spirit and intimate acquaintance with the Principles of Jurisprudence, which he possessed in so eminent a degree.

“Nothing,” says Sir WILLIAM JONES, in the address alluded to, “could be more obviously just
“than to determine private contests according to
“those laws which the parties themselves had ever
“considered as the rules of their conduct and en-
“gagements in civil life; nor could any thing be
“wiser

* See his last Anniversary Discourse as President of the Asiatic Society, Vol. IV, p. 176.

“ wiser than, by a legislative act, to assure the
 “ *Hindu* and *Muselman* subjects of Great Britain,
 “ that the private laws which they severally hold
 “ sacred, and a violation of which they would have
 “ thought the most grievous oppression, should not
 “ be superseded by a new system, of which they could
 “ have no knowledge, and which they must have
 “ considered as imposed on them by a spirit of ri-
 “ gour and intolerance. So far the principle of de-
 “ cision between the native parties in a cause appears
 “ perfectly clear: but the difficulty lies (as in most
 “ other cases) in the application of the principle to
 “ practice; for the *Hindu* and *Muselman* laws are
 “ locked up for the most part in two very difficult
 “ languages, Sanscrit and Arabic, which few Eu-
 “ ropeans will ever learn, because neither of them
 “ leads to any advantage in worldly pursuits; and
 “ if we give judgment only from the opinions of
 “ the native lawyers and scholars, we can never be
 “ sure that we have not been deceived by them.
 “ It would be absurd and unjust to pass an indiscriminate
 “ censure on a considerable body of men;
 “ but my experience justifies me in declaring, that
 “ I could not, with an easy conscience, concur in
 “ a decision, merely on the written opinion of na-
 “ tive lawyers, in any cause in which they could
 “ have the remotest interest in misleading the Court:
 “ nor, how vigilant soever we might be, would it
 “ be very difficult for them to mislead us; for a
 “ single

“ single obscure text, explained by themselves, might
 “ be quoted as express authority, though perhaps,
 “ in the very book from which it was selected, it
 “ might be differently explained, or introduced
 “ only for the purpose of being exploded. The ob-
 “ vious remedy for this evil had occurred to me
 “ before I left England, where I had communicated
 “ my sentiments to some friends in Parliament, and
 “ on the Bench in Westminster Hall, of whose dis-
 “ cernment I had the highest opinion; and those
 “ sentiments I propose to unfold, in this letter, with
 “ as much brevity as the magnitude of the subject
 “ will admit: If we had a complete Digest of *Hindu*
 “ and *Muhammedan* Laws, after the model of Jus-
 “ TINIAN’S inestimable Pandects, compiled by the
 “ most learned of the native lawyers, with an accu-
 “ rate verbal translation of it into English; and if
 “ copies of the work were repositied in the proper
 “ offices of the *Sedr Diwáni Adálat*, and of the Su-
 “ preme Court, that they might occasionally be
 “ consulted as a standard of justice, we should rarely
 “ be at a loss for principles at least, and rules of law,
 “ applicable to the cases before us, and should never
 “ perhaps be led astray by the *Pandits* or *Maulavis*,
 “ who would hardly venture to impose on us, when
 “ their imposition might so easily be detected. The
 “ great work, of which JUSTINIAN has the credit,
 “ consists of texts collected from law-books of approv-
 “ ed authority, which in his time were extant at

“ Rome: and those texts are digested according to
 “ a scientific analysis; the names of the original
 “ authors, and the titles of their several books,
 “ being constantly cited, with references even to the
 “ parts of their works from which the different pas-
 “ sages were selected. But although it comprehends
 “ the whole system of jurisprudence, public, private,
 “ and criminal, yet that vast compilation was finish-
 “ ed, we are told, in three years: it bears marks,
 “ unquestionably, of great precipitation, and of a
 “ desire to gratify the Emperor by quickness of dis-
 “ patch; but, with all its imperfections, it is a most
 “ valuable mine of juridical knowledge. It gives
 “ law at this hour to the greatest part of Europe;
 “ and, though few English lawyers dare make such
 “ an acknowledgment, it is the true source of nearly
 “ all our English laws that are not of a feudal origin.
 “ It would not be unworthy of a British Govern-
 “ ment to give the Natives of these Indian provinces
 “ a permanent security for the due administration of
 “ justice among them, similar to that which JUSTI-
 “ NIAN gave to his Greek and Roman subjects;
 “ but our compilation would require far less labour,
 “ and might be completed with far greater exact-
 “ ness, in as short a time; since it would be confined
 “ to the laws of Contracts and Inheritances, which
 “ are of the most extensive use in private life, and
 “ to which the Legislature has limited the decisions
 “ of the Supreme Court in causes between native
 “ parties:

“ parties: the labour of the work would also be
 “ greatly diminished by two compilations already
 “ made in Sanscrit and Arabic, which approach
 “ nearly, in merit and in method, to the Digest of
 “ JUSTINIAN. The first was composed a few centu-
 “ ries ago by a *Bráhmen* of this province, named
 “ RAGHUNANDANA, and is comprised in twenty-
 “ seven books at least, on every branch of *Hindu*
 “ law: the second, which the Arabs call the Indian
 “ Decisions, is known here by the title of *Fetáwá*
 “ *Aálemgiri*, and was compiled, by the order of
 “ AURANGZIB, in five large volumes, of which I
 “ possess a perfect and well collated copy. To trans-
 “ late these immense works, would be superfluous
 “ labour; but they will greatly facilitate the com-
 “ pilation of a Digest on the Laws of Inheritance
 “ and Contracts; and the Code, as it is called, of
 “ *Hindu* Law, which was compiled at the request of
 “ Mr. HASTINGS, will be useful for the same pur-
 “ pose, though it by no means obviates the difficul-
 “ ties before stated, nor supersedes the necessity, or
 “ the expedience at least, of a more ample repository
 “ of *Hindu* laws, especially on the twelve different
 “ contracts, to which ULPIAN has given specific
 “ names, and on all the others, which, though not
 “ specifically named, are reducible to four general
 “ heads. The last-mentioned work is intitled *Vi-*
 “ *vádárnava Sétu*, and consists, like the Roman Di-
 “ gest, of authentic texts, with the names of their
 “ several

“several authors regularly prefixed to them, and
 “explained, where an explanation is requisite, in
 “short notes, taken from commentaries of high au-
 “thority: it is, as far as it goes, a very excellent
 “work; but though it appear extremely diffuse on
 “subjects rather curious than useful, and though
 “the chapter on Inheritances be copious and exact,
 “yet the other important branch of jurisprudence,
 “the Law of Contracts, is very succinctly and super-
 “ficially discussed, and bears an inconsiderable pro-
 “portion to the rest of the work. But, whatever
 “be the merit of the original, the translation of it
 “has no authority, and is of no other use than to
 “suggest inquiries on the many dark passages which
 “we find in it: properly speaking, indeed, we can-
 “not call it a translation; for though Mr. HALHED
 “performed his part with fidelity, yet the Persian
 “interpreter had supplied him only with a loose in-
 “judicious epitome of the original *San scrit*, in
 “which abstract many essential passages are omitted,
 “though several notes of little consequence are in-
 “terpolated, from a vain idea of elucidating or im-
 “proving the text*.”

Besides

* The letter from which this extract is taken, is dated 19th March
 1788. On the same date, the then Governor General, MARQUIS
 CORNWALLIS, with the concurrence of the Members of Council, ac-
 cepted the offer in terms honourable to the proposer, and expressive of
 the most liberal sentiments. “The object of your proposition,” they

say,

Besides the great work of RAGHUNANDANA above mentioned, many other Digests have been compiled by *Hindu* lawyers; which, like his, consist of texts collected from the Institutes attributed to ancient legislators, with a gloss, explanatory of the sense, and reconciling seeming contradictions, to fulfil the precept of their great lawgiver, “When there are
 “ two sacred texts apparently inconsistent, both are
 “ held to be law; for both are pronounced by the
 “ Wise to be valid and reconcileable*.” From various digests, and from commentaries on the institutes of law, the present Digest has been compiled; and the venerable author, JAGANNÁTHA, has added a copious commentary, sometimes indeed pursuing frivolous disquisitions, but always fully explaining the various interpretations of which the text is susceptible. In restricting this compilation to the law of contracts and successions, he has omitted the law of evidence, the rules of pleading, the rights of landlord and tenant, the decision of questions respecting boundaries, with some other topics, which should be likewise treated for the purpose of assisting courts of civil judicature in deciding private contests according to the laws which the *Hindu* subjects of Great

say, “being to promote a due administration of justice, it becomes
 “ interesting to humanity; and it is deserving of our peculiar attention,
 “ as being intended to increase and secure the happiness of the numerous
 “ subjects of the Company’s provinces.”

* MENU, Chap. II, v. 41.

Great Britain hold sacred. The body of Indian Law comprises a system of duties religious and civil. Separating the topic of religious duties, and omitting ethical subjects, *Hindu* lawyers have considered civil duties under the distinct heads of private contests and forensic practice: the first comprehends law private and criminal; the last includes the forms of judicial procedure, rules of pleading, law of evidence written and oral, adverse titles, oaths, and ordeal. The translation of *MENU* has sufficiently made known the criminal law of the *Hindus*, which is now superseded by the *Muhammedan* system: but another head of private contests, in which, under the name of disputes concerning boundaries, the rights of husbandmen are examined, contains matter both curious and useful; practical law, especially the system of evidence, must be sometimes consulted in the provincial courts, which are not governed by English law; and the rules of special pleading have been pronounced excellent by one whose opinion has great weight*.

The *D'herma 'Sāstra*, or sacred code of law, comprising all the subjects above mentioned, is called *Smṛiti*, what was remembered, in contradistinction to *Sruti*, what was heard. By these names it is signified, that the *Vēda* has preserved the words of revelation, while the system of law records the sense expressed

* Sir William Jones, in a manuscript note.

pressed in other words. It has been promulgated by thirty-six ancient Sages, who are named in three verses of the *Padma purána*; YÁJNYAWALCYA, however, mentions no more than twenty: on the other hand, Sages are cited in law tracts, whose names do not appear in either list. Treatises, attributed to these ancient philosophers, are extant, which internal evidence proves to be, though probably composed by other persons, as the *Puránas*, written by many different authors, are all ascribed to VYÁSA; for, the dramatic form which has been given to most of those tracts, and the use of the third person when the reputed author is named in his code, extort a confession from commentators, that the institutes must have been composed by pupils from the recollection of precepts delivered by their holy instructor. Without examining whether the authenticity of codes now extant be thus sufficiently established, the *Hindus* revere those institutes, as containing a system of sacred law confirmed by the *Véda* itself, in a text thus translated by Sir WILLIAM JONES according to the gloss of SANCARA: “GOD, having created the four classes, had not yet completed his work; but, in addition to it, lest the royal and military class should become insupportable through their power and ferocity, he produced the transcendent body of law; since law is the king of kings, far more powerful and rigid than they: nothing can be mightier than

than law, by whose aid, as by that of the highest monarch, even the weak may prevail over the strong."

Concerning the birth and actions of the legislators, we know little more than what is recorded in the *Puránas*; and the whole of what is there recorded, belongs either to heroic history, or to mythology. Such topics would be here misplaced: but a short notice of the institutes, commentaries, and digests, which have been used by the compiler, may be fitly subjoined to introduce to the reader's acquaintance the authorities cited in the work.

The laws of MENU, who is revered by *Hindus* as the first of legislators, have already appeared in the English language. Among the numerous commentaries on his institutes, the most esteemed have been noticed in the preface to the translation of his work, namely a commentary by MÉD'HÁTITHI son of BÍRASWÁMI BHATÁA, which, having been partly lost, has been completed by other hands at the court of MADANA PÁLA, a prince of *Díg'h*; another commentary by G'OVINDA RÁJA; a third by D'HARANID'HERA; and the celebrated gloss of CULLÚCABHATTA, intitled *Menwart'ha Muctávali*, and some others, are occasionally quoted in this Digest.

ATRI, not named among legislators in the *Padma purána*,

purāna, is second in the list of YÁJNYAWALCYA: he is one of the ten lords of created beings*, and father of DATTATREYA, DURVÁSAS and SÓMA: a perspicuous treatise in verse, attributed to him, is extant. VISHNÚ, not the Indian divinity, but an ancient philosopher who bore this name, is reputed author of an excellent law treatise in verse; and HÁRITA is cited as the author of a treatise in prose: metrical abridgements of both works are also extant.

YÁJNYAWALCYA, grandson of VISWÁMITRA, is described, in the introduction of his own institutes, as delivering his precepts to an audience of ancient philosophers assembled in the province of *Mit'hilā*. These institutes have been arranged in three chapters, containing one thousand and twenty-three couplets. An excellent commentary, intitled *Mitácshará*, was composed by VIJNYANÉŚWARA, a hermit, who cites other legislators in the progress of his work, and expounds their texts, as well as those of his author, thus composing a treatise which may supply the place of a regular digest; it is so used in the province of *Benares*, where it is preferred to other law tracts; but some of his opinions have been successfully controverted by late writers. Following the arrangement of his author, he has divided his work into three parts: the first treats of duties; the second, of private contests and administrative law; the third, of purification,

* MENU, Chap. I, v, 35.

fication, the orders of devotion, penance and so forth. Another commentary on YÁJNYAWALCYA by DÉVA-BÓD'HA, and one by VISWARÚPA, are occasionally cited. The *Dípacalicá* by 'SÚ LAPÁNTI, which is likewise a commentary on YÁJNYAWALCYA, is in deserved repute with the *Gauriya* school.

Us'ANAS is another name of SUCRA, the regent of the planet Venus: he was grandson of BHRIGU: his institutes in verse, with an abridgement, are extant; as is a short treatise containing about seventy couplets ascribed to ANGIRAS, who holds a place among the ten lords of created beings, and, according to the *Bhágavata*, became father of UTAT'HYA and of VRĪHASPATI in the reign of the second MENU. A short tract containing a hundred couplets is attributed to YAMA, brother of the seventh MENU, and ruler of the world below: CULLÚCABHAÍTÁ wrote a gloss on his institutes. APASTAMBA was author of a work in prose, which is extant, with an abridgement in verse; but the metrical abridgement only of the institutes of SAMVERTA is among the tracts which were collected for the present compilation. CÁTYÁYANA is author of a clear and full treatise on law, and also wrote on grammar and on other subjects. VRĪHASPATI, regent of the planet Jupiter, has a place among legislators; he was son of ANGIRAS according to one legend, but son of DÉVALA according to another: the abridgement of his institutes, if not the code at large,

large, is extant. PARÁSARA, grandson of VASÍSHT'HA, is termed the highest authority for the fourth age: a work attributed to him is extant, with a commentary by MÁDHAVÁCHÁRYA. VYÁSA, son of PARÁSARA, is reputed author of the *Puránas*, which, with some works more immediately connected with law, are often cited in his name. SANC'HA and LIC'HITA are the authors of a joint work in prose, which has been abridged in verse: their separate tracts in verse are also extant. Heroic history notices two personages of the name of DACSHA; one son of BRAHMÁ, the other son of PRACH'ETAS: a similar legend on the marriage of their daughters, and which is evidently allegorical, is told of both: it does not appear certain which of them is the legislator; however, a law treatise in verse is dignified with this name. GAUTAMA, son of the celebrated founder of a rational system of metaphysics and logic, is named in every list of legislators, although texts are cited in the name of his father GÓTAMA, the son of UTAT'HYA: an elegant treatise in prose is ascribed to GAUTAMA. S'ÁTÁTAPA is author of a treatise on penance and expiation, of which an abridgement in verse is extant. VASÍSHT'HA, the preceptor of the inferior gods, and one of the lords of created beings, is the last of twenty legislators named by YÁJÑYAWALCYA: his elegant work in prose mixed with verse is extant.

In the *Padma purāna* the number of thirty-six legislators is completed by the following names: MARÍCHI, the father of CAŚYAPA; PULASTYA, father of AGASTYA; PRACHÉTAS, son of PRÁCHÍNAVARHISHA by a daughter of the Ocean, and father of DACSHA; BHRĪGU, son of MENU; NÁREDA, begotten by BRAHMÁ, and again by CAŚYAPA, on the wife of DACSHA; CAŚYAPA, son of MARÍCHI; VISWÁMITRA, a Sage among military men, who became a *Bráhmaṇa* through his devotion; DÉVALA, son of VISWÁMITRA, and grandfather of the celebrated grammarian PÁÑINI, but according to another legend great-grandson of DACSHA; RĪSHYAŚRINGA, son of VIBHÁNDACA by a miraculous birth from a doe; GÁRGYA, the astronomer; BAUD'HÁYANA, who is frequently cited by lawyers; PAIT'HÍNASI, who is also cited in this Digest; JÁBÁLI, SUMANTU, PARÁSCARA, LÓCÁÇSHI and CUT'HUMI, whose names rarely occur in any compilation of law.

Besides these legislators, DHAUMYA, the priest of the *Pándavas*, and author of a commentary on the *Yajurveda*, ÁŚWALÁYANA, who wrote on the detail of religious acts and ceremonies, and DATTA, the son of ATRI, are cited in this compilation; and BHÁGURI is quoted for a gloss on the institutes of MENU.

The *Rámáyana* of VÁLMICI, the earliest epic poem, is cited as nearly equal in authority with the

poems on mythology and heroic history, which are ascribed to VYÁSA. For the purpose of elucidation, the compiler sometimes quotes metaphysical rules and ethical maxims, and, with particular veneration, the sublime works of UDAYANÁCHÁRYA, the reviver of the rational system of philosophy. For the same purpose he has made some use of the dramas and epic poem of CÁLIDÁSA, and lyric poetry of JAYADÉVA. The treatises and commentaries of lawyers, which have been consulted by the compiler, are numerous.

The *Ch'handóga parisisht'a* by CÉSAVA MISRA a celebrated philosopher, and its commentary named *Paris'isht'a pracás'a*, are works of great authority; they treat of the duties of priests, especially those who are guided in their religious ceremonies by the *Sáma védá*. A more general treatise, intitled *Dwaita paris'isht'a*, is the work of the same author, a native of *Mit'hilá*. The *Viváda Retnácara*, a digest highly esteemed by the lawyers of *Mit'hilá* or *Tírabhukti*, was compiled under the superintendence of CHANDÉŚWARA, minister of HARASINHADÉVA king of *Mit'hilá*. CHANDÉŚWARA is reputed author of other tracts. The *Viváda Chintámeni*, *Vyavahára Chintámeni*, and other works of VÁCHESPATI MISRA, are also in high repute among the lawyers of *Mit'hilá*. No more than ten or twelve generations have passed since he flourished at *Semaul* in *Tirhút*.

The *Viváda Chandra* and other works composed by LAC'HIMÁDEVÍ are likewise much respected in the *Mit'hilá* school. This learned female set the name of her nephew MISARU MISRA to all her compositions on law and philosophy, and took the titles of her work from the tenth reigning prince, CHANDRA-SINHA, grandson of HARASINHADÉVA. The *Viváda Chandra* is never cited by name in the new digest; although it has been frequently copied in the anonymous commentary.

The *Vyavahára-tatwa*, *Dáya-tatwa*, and other works of RAGHUNANDANA Bandyaghat'iya, are highly respected by the *Gauriya* school. This great lawyer is frequently cited by the title of *Smárta-bhát-táchárya*, as VÁCHESPATI MISRA is distinguished by his family name of MISRA. The *Dwaita nirnaya* of VÁCHESPATI BHATTÁCHÁRYA, a treatise on questions of law, is often quoted by the compiler of the new digest, who has only once named him: in every other instance he cites him by the appellation of "my venerable grandfather." In allusion to the similarity of their names, this lawyer adopted a title for his work from a similar treatise by VÁCHESPATI MISRA. The compiler of the new digest also quotes his maternal grandfather's brother by the appellation of "modern VÁCHESPATI."

JÍMU'TAVÁHANA, who gave his name to a digest
intituled

intituled *D'harma retna*, is said to have reigned on the throne of SÁLIVÁHANA. He is probably the same with the son of JÍMÚTACÉTU, a prince of the race of *Sil'ara*, who reigned at *Tagara**. The chapter on Inheritance is extant, with a commentary by 'SRÍ CRÍSHNA TERCÁLANCÁRA, a modern writer of no great authority, who belongs to the *Gauriya* school, and is often cited.

HELÁYUD'HA, the spiritual adviser of LACSHMANA SÉNA, (a renowned monarch who gave his name to an era of which six hundred and ninety-two years are expired,) is the author of the *Nyáyá servaswa*, *Bráhmaṇa servaswa*, *Pandita servaswa*, and many other tracts on the administration of justice, and on the duties of classes and professions. He was son of D'HANANJAYA the celebrated lexicographer; and his brothers PAŚUPATI and IS'ÁNA are authors of rituals, the first for obsequies, &c. the second for daily acts of religion.

LACSHMÍD'HARA composed a treatise on administrative justice, by command of GÓVINDA CHANDRA a king of *Cás'i*, sprung from the *Vástava* race of *Cáyast'has*. He is likewise author of a digest intituled *Calpateru*, which is often cited. By command of the same prince, NARASINHA, son of RÁMACHANDRA the grammarian and philosopher, composed a law-tract

* Asiatic Researches, Vol. I. p. 357 and 361.

tract intitled *Góvindárnava*, and several other treatises.

'SRÍ CARÁCHÁRYA and his son 'SRÍNÁT'HÁCHÁRYA CHUR'ÁMENI were both celebrated lawyers of the *Mit'hilá* school. The first wrote a treatise on inheritances; the last is author of a tract on the duties of the fourth class, which is intitled *Achárya chandricá*. I have not seen the other works of these authors.

The *Smṛtisāra*, or, at full length, *Smṛtyart'hasāra*, by 'SRÍD'HARÁCHÁRYA, a priest of the *Dravir* tribe, is a treatise on religious duties, in which questions of civil duty are incidentally introduced. He cites the *Cámad'hénu*, a law tract said to be a gloss on MENU; but which, not having seen the book, I cannot affirm. The *Pradīpa*, *Calpadruma*, and *Calpalatá*, works of which I can give no other notices, are cited in the *Smṛtisāra*.

The *Madana Párijāta*, on civil duties, is the work of VIŚWÉŚWARABHAṬṬA, and derives its name from MADANA PÁLA, a prince of the *Ját'* race, who reigned at *Cásht'hanagar* or *D'igh*. This work, which is sometimes quoted in the name of MADANA PÁLA himself, cites, among other authorities, the *Sáparārca* and *Smṛtichandricá*, which do not appear to be otherwise known, and the *Hémádri*, which is occasionally quoted in the new digest.

'SÚLAPÁNI,

'SÚLAPÁNI, a native of *Mit'hilá*, who resided at *Sahurîa* in Bengal, wrote a treatise on penance and expiation, which is in great repute with both schools. His commentary on YÁJNYAWALCYA, intitled *Dîpacalicá*, has been already noticed. BHAVADÉVA BHATTA, also called BALABALABHI BHUJANGA, was author of several treatises on religious duties. These, with the rituals of the same author, are much consulted in Bengal and in the southern provinces of India. JITÉNDRIYA is often cited in the *Mitácshará*, and sometimes in the new Digest. GÓYÍCHANDRA, GRAHÉSWARA, D'HÁRÉSWARA, BALARÚPA, HARIHARA, MURÁRI MISRA, and many others, have been occasionally consulted.

Among modern digests the most remarkable are, the *Vivádárnava sêtu*, compiled by order of Mr. HASTINGS; the *Viváda sárárnava*, compiled at the request of Sir WILLIAM JONES, by SERVÓRU TRIVÉDÍ, a lawyer of *Mit'hilá*; and the *Viváda bhangárnava*, by JAGANNÁT'HA, which is now translated.

On this translation I shall briefly observe, that the version of many texts come from the pen of Sir W. JONES; for most of the laws quoted from MENU are found in his translation of the *Mánava d'hermaśástra*, and other texts had been already translated by him when perusing the original digest formerly compiled by order of Mr. HASTINGS. It has become

my part to complete a translation of the new digest of *Indian* law. Selected for this duty by Sir JOHN SHORE, whose attention extended to promote the happiness of the native inhabitants of the provinces which he governs, and to encourage the labours of the literary society over which he presides, is no less conspicuous than his successful administration of the British interests in India, I have cheerfully devoted my utmost endeavours to deserve the choice by which I was honoured: nothing, which diligence could effect, has been omitted to render the translation scrupulously faithful; and to this it has been frequently necessary to sacrifice perspicuous diction. The reader, while he censures this and other defects of a work executed in the midst of official avocations, will candidly consider the obvious difficulties of the undertaking. Should it appear to him that much of the commentary might have been omitted without injury to the context, or that a better arrangement would have rendered the whole more perspicuous, he will remember, that the translator could use no freedom with the text, but undertook a verbal translation of it: what has been inserted to make this intelligible, is distinguished by Italics, as was practised by Sir WILLIAM JONES in his version of *MENU* and of the *Sirájiyyah*; in very few instances has any greater liberty been taken, except grammatical explanations and etymologies, which are sometimes though rarely omitted, or abridged, where a
literal

literal version would have been wholly unintelligible to the English reader. In the orthography of *Sanscrit* words, the system adopted by Sir W. JONES has been followed. To obviate the necessity of referring to the first volume of the Asiatic Researches, where that system was proposed, an explanatory note is subjoined. This, with an index, and a few scattered annotations, which have been added, may prove sufficient to assist the occasional perusal of a work intended to disseminate a knowledge of Indian law, and, serving as a standard for the administration of justice among the *Hindu* subjects of *Great Britain*, to advance the happiness of a numerous people.

H. T. COLEBROOKE.

MIRZAPOOR,
17th December 1796.

NOTE

NOTE

ON THE

ORTHOGRAPHY OF SANSKRIT WORDS.

To obviate the necessity of a reference to the first volume of the Asiatic Researches, where the system of orthography which is here followed was first proposed, I subjoin the pronunciation of the letters.

A, E pronounced as *u* in *sun*, as *i* in *fir*, as *e* in *her*. When final, it has a very obscure sound, like the *e muet* of the French. The Bengalese pronounce this letter as a short *o*.

VA as *a* in *call*.

I as *i* in *fit*.

I' as *i* in *machine*, and as *ee* in *see*,

U as *u* in *pull*.

U' as *oo* in *pool*.

Rĩ nearly as *ri* in *trip*: more exactly as *ri* in *merrily*.

Rĩ nearly as *ree* in *tree*.

Lrĩ nearly as *lry* in *revelry*. In Bengal this letter expresses both syllables of the word *lily*.

Lrĩ the same prolonged.

E' as the first *e* in *there*, and as *ei* in *heir*.

O' as *o* in *go*.

Ai as *i* in *file*. In Bengal it is pronounced like the Greek diphthong in *poimén*, a shepherd.

Au as *ou* in *thou*.

N & M . . represent the nasal semivowel, which is an abbreviation of the nasal consonants at the end of a syllable; sometimes pronounced gutturally, sometimes labially. Its sounds are familiar to the French tongue.

- Hrepresents the aspirate semivowel, an abbreviation or substitute, at the close of a syllable, for the strong aspirate. It gives intensity to the sound of the preceding vowel. The short vowels *a* and *i*, and sometimes *u*, when final, are scarcely perceptible unless followed by this element.
- Cas *c* in *cause*, and as *k* in *kill* and *ken*. Used before *e* and *i*, it has not the sound of *f* but of *k*.
- C'hnearly as *ch* in *choler*, *chiromancy*, &c. *Cathexy* perhaps furnishes a better example of this sound,
- Gas *g* in *gain*.
- G'hnearly as *g-h* in *log-house*.
- Nas *ng* in *sing*. It has the sound which we also give to nasals preceding guttural letters, as, *ink*, *bank*, &c.
- Chas *ch* in *church*.
- Ch'hnearly as *ch-h* in *much harm*, *rich heir*, &c. if no pause be made in pronouncing these words.
- Jas *j* in *joy*.
- J'hnearly as *dge-h* in *edge-hill*.
- Nya peculiar nasal, pronounced before vowels nearly as *ni* in *pannier*, or in *onion*. Before a consonant it varies little from the sound of the nasal in *singe*. I therefore write it in such instances with a single N. The conjunct *jny* is pronounced in the eastern provinces as *gy*, or as *g*.
- T', T'h, D', D'h . . the sounds of these cerebral letters can only be learned by practice; they are often confounded in pronunciation with a harsh *r*, or with an *l*.
- N'a peculiar nasal sounded high in the roof of the mouth.
- Tas *t* in *tin* and *ten*.
- T'hnearly as *t-h* in *bit him*, *white-hall*, &c.
- Das *d* in *deal*.
- D'hnearly as *d-h* in *red hair*.
- Nas *n* in *noble*.
- Pas *p* in *pen*.
- P'hsometimes pronounced as *ph* in *philanthropy*; more generally as in *shepherd*, *haphazard*, &c.
- Bas *b* in *bell*.
- B'has *b-h* in *abhor*.
- Mas *m* in *man*.
- Yas *y* in *yet*; in the eastern provinces it is pronounced as *j*.
- Ras *r* in *run*.

L as *l* in *lull*.

V, W as *v* in *valve*; sometimes as *w* in *wind*. In the eastern provinces it is confounded with *b*.

S' a peculiar sibillant, differing from our *s* which is dental, as it is founded higher on the palate. It is sometimes pronounced like *ʃ*.

Sh as *ʃ* in *ship*, but often pronounced as *c'h*, or rather as the Greek χ .

S as *f* in *fin*.

H the strong breathing, or aspirate; as *h* in *hair*. The conjunct *hy* is pronounced in the eastern provinces like *hj* confounded by the ear with *sj* or *zj*: I cannot well mark this peculiar sound.

Csh a compound letter pronounced as *ʃi* in *fiction*; but by some it is founded like *ch*, by others like *c'h*.

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PART I.

CONTRACTS.

PART I.

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PREFACE

THE COMPILER.

(Originally written in Verse.)

HAVING saluted the ruler of gods, the lord of beings, and the king of dangers, lord of divine classes, the daughter of the king of mountains, the venerable sages, and the reverend authors of books, I, JAGANNÁTHA, son of RUDRA, by command of the protectors of the land, compiled this book,

2. Entitled the sea of controversial waves, perspicuous, diffusive, with its islands and gems, pleasing to the princes and the learned.

3. What is my intellect, compared with the sacred code? A feeble bark on a perilous ocean. The favour of the supreme ruler is my sole refuge in traversing that ocean with this feeble vessel.

4. The learned RÁDHÁCÁNTA, GURUPRESHÁDA of firm and spotless mind, RÁMAMÓHANA, RÁMANID'HÍ, GHANAŚYÁMA, and GANGÁDHARA, a league of assiduous pupils, must effect the completion of this work, which shall gratify the minds of princes : of this I have unquestioned certainty.

5. Embarking on ships, often do men undaunted traverse the perilous deep, aided by long cables, and impelled by propitious gales.

6. Having viewed the title of Loans and the rest, as promulged by wise legislators in codes of law, and as expounded by former intelligent authors,

7. And having meditated their obscure passages, with the lessons of venerable teachers, the whole is now delivered by me.

BOOK I.

ON

LOANS AND PAYMENT.

CHAP. I.

ON

LOANS.

SECT. I.—*On Loans in general.*

I.

NÁREDA:—What may, or may not, be lent; by whom, to whom, and in what form; with the rules for delivery and receipt, are held *comprised under the title of Loans delivered (rinádána)*.

“By whom,” as a creditor, a loan may be delivered or advanced; namely, by a mercantile man, and the like. “To whom,” as a debtor; meaning, to other persons than women, and the rest. “In what form;” with a pledge previously taken, and so forth. “What may be lent;” the excess above that which ought to be appropriated to the support of the family, and the like. All that *is comprised under the title of Loans delivered.*

Again: “By whom,” as a creditor, *a loan* ought not to be delivered or advanced; namely, by a priest, or the like, not subsisting by his own *regular* livelihood. “To whom,” as debtors; to women and the rest. “In what form;” meaning clandestinely.

tinely. "What may not be lent;" that which only suffices for the support of the family, and the like. All that *is comprised under the same title*.

Again: "By whom" a debt should be delivered or paid; namely, by the debtor. "To whom;" to the creditor *himself*, not through his wife, or the like. "In what form;" with a writing previously executed, and so forth. "What should be paid;" a debt contracted by *the party himself*, and the like. All that *is comprised under the present title*.

Again: "By whom" a debt need not be paid; by the great-grandson of the debtor, or his remoter descendant. "To whom" *it should not be paid*; to the wife of the creditor, and the like. "In what form;" clandestinely. "What" *should not be paid away*; the exclusive property of the wife, and so forth. All that *is comprised under the present title*.

"The rules for delivery" *by the creditor*; the rules for advancing a loan on interest; namely, what sort of interest may be taken without a breach of duty on the part of the creditor. "And *the rules for receipt*;" the rules for receipt by the creditor at the period of liquidation: those *rules* are the modes of recovery consonant to moral duty, and the rest. "The rules for delivery" by the debtor; the rules to be propounded for the discharge of debts, such as payment on demand, or the like. "The rules for receipt;" the delivery of stipulated interest, and so forth. All these titles of forensick contest are comprised under the title of Loans and Payment: the particulars will be delivered under their respective heads; a little has been mentioned cursorily in this place, to explain the import of the text.

On the reading preferred by BHAVADÉVA and others, *yat'hā bhavēt* instead of *yat'hāchayat*, the sense is similar: the loan, which may be advanced, is comprehended under the title of Loan and Payment; this forms one member of the sentence. So such loans as may not be made, and so forth, *are also comprised under the same title*: and the terms "loan" and "debt" may be understood in the secondary sense of *a loan not actually advanced, or a debt not actually contracted*.

According to the *Mitācsharā*, the title of Loan and Payment is seven-fold; five-fold in respect of the debtor, and two-fold in respect of the creditor; namely, *in respect of the last*, the rule

rule for delivery, and the rule for receipt. This will be subsequently explained*.

But the etymology of the term *rĩnádána* is this: "the complete delivery (*ádána*) of a loan or debt (*rĩna*), by whom, where, and to whom *made*:" an apposition in the form called *bahubríhi*. By the term "complete delivery," both the advance and repayment are expressed. But, if the thing lent be understood, according to the rule, that "neuter derivatives from active words are similar to nouns denoting substance," the word *rĩnádána* only signifies "a loan or debt (*rĩna*) completely delivered (*ádiyamána*);" being derived in the form of apposition called *carmad'háraya*. Yet it may be also understood in the sense resulting from apposition in the form called *bahubríhi*, "the complete delivery of a loan or debt, by whom, or in what place made." The application of several senses to a wordly phrase, through the ambiguity of terms, is unexceptionable: it is accordingly said, that, "in wordly matters, there is no objection to distinguish a phrase according to the distinction of inferible meaning:" and these, though words of a holy Sage, are secular; for they are unconnected with the *Véda*.

In the expression "the loan ought not to be delivered or advanced," the word "loan" bears a secondary sense; for it is connected with the secondary notion of the request *without the actual advance of the loan*, and so forth; and it does not denote what will be mentioned as the defined sense of *loan* or *debt*.

Other lawyers explain the title, "receipt (*ádána*) of a loan (*rĩna*), by what mode *obtained*;" another apposition in the form called *bahubríhi*: and the third or causal case is used adjectively; thus the essential properties with which the receipt of a loan is connected, are severally titles of Loans received. Those essential properties are, the creditorship of a *Vaisya*, or the like; the debtorship of others than women, or the like; feneration at the rate of an eightieth part *by the month*, and so forth: *NÁREDA* also specifies, as comprehended under the title of Loans, the place where, or person to whom, the loan is made (I.)

It is said, "may, or may not, be lent;" but what is a loan? The Sage replies to that question:

II.

* See Chap. 5. On Payment of Debts.

II.

NÁREDA :—That contract of delivery and receipt which is made with a view to a gain *by the lender* on the principal sum while remaining *with the debtor*, is called a loan on interest (*cusída*); and money-lenders acquire their subsistence by it.

“The principal sum,” literally its continuance: the contract of delivery and receipt is made with a view to gain or increase, so long only as the principal remains *with the debtor*. These two, the words “*delivery*” and “*receipt*,” are in the passive form. The loan is delivered by the creditor with a view to a gain on a durable capital, and is received by the debtor with a stipulation to that effect. When it bears no interest, then the term “loan” is employed in a secondary sense; *for* a subsistence is not thereby gained.

A secondary notion, or quality, is stated, in the fourth lecture of the *Nyáya**, to be that which is necessary to the existence affirmed†. That which is given, is received back; or something of the same kind *in its stead*: hence, what is advanced for the purposes of traffick, is not a loan. VÁCHESPATI MISRA.

“The principal sum;” the continuance of the money lent. “A gain;” the acquisition of money, or the like. The very loan which is advanced by the owner or *creditor* with a view to that, is received by the user or *debtor*. The *Retnácara*.

Consequently, that property which affords a gain stipulated in consideration of its remaining *for a time* with the debtor, is a loan; or, that which produces a gain by being advanced to remain with the debtor, is a loan. Such is the definition of *loan*. A full account of this will be delivered in another work.

When interest is not borne, the word “loan,” or debt, is employed only in a secondary sense; for money-lenders do not acquire their subsistence by loans without interest: and it is employed in a general and secondary sense in the phrase “a loan shall

* Treatise of GÓTAMA, on Dialectick Philosophy.

† Essential, not adventitious, to the subject.

shall be given ;” and in this, “ he who takes the assets, shall be compelled to pay the debts ;” and in other instances. ‘ What is necessary to the existence affirmed,’ refers to the agreement that “ the debt shall positively be repaid :” and this extends to other things, as *payment on demand*, and the like. Such is MISRA’s opinion.

But we maintain this definition : money advanced with a view to the future *revived* property of the creditor, and to his gain by means of interest or the like, is a loan ; for, even without interest, there may be friendship gained, or the like. The term is not employed in a secondary sense : friendship, and the like, are comprehended in the phrase “ the acquisition of money, or the like.”

“ The continuance of the principal sum ;” its remaining with the debtor, its being unpaid, and so forth. ‘ So long only as the principal remains ;’ since the term “ only” excludes any other supposition, interest is not obtained if the principal sum be wanting. But, as for what is advanced for the purposes of traffick, there is not any non-repayment ; for the exact meaning of non-repayment is, that, after the creditor’s property has ceased by the act of delivering the thing lent, neither the thing itself, which had been his property, is ultimately restored, nor an equivalent immediately given. Or else, the advance of the principal may be signified by the expression, “ so long only as the principal remains ;” for it shows an inseparable relation*. In traffick, and the like, the employment of a man’s own property with a view to gain is acknowledged ; not the employment of another’s property. According to MISRA, gain consists in the excess above the principal held as a man’s own property.

But we explain “ the principal sum,” its continuance, *while it is held as property by the creditor in reversion, and by the debtor in possession*. “ With a view to a gain ;” under the term “ gain” are comprehended the interest received by the creditor, friendship gratified, duty fulfilled, or the like ; it also comprehends the debtor’s enjoyment of the thing lent, and the like. Hence the exposition of the *Retnâcara*, “ the acquisition of money, or the like :” it is not there said,

* In Logick, *anwaya* and *vyatirêca* ; the first is the relation of events, of which, whenever one occurs, the other also occurs ; the second is the connection of circumstances, of which, when one occurs not, the other also does not occur.

said, "received by the debtor," but "received by the user;" nor is it clearly shown, that the expression, "with a view to gain, so long only as the principal remains *with the debtor*," is that form of speech which is named *Saptimī tat puruṣha**. It appears, therefore, that a loan or debt is money connected with a gain *allowed* in consideration of the creditor's property in it; on the notion, that, because the money was the property of that man, therefore the gain is his. Or it may be "money connected with a gain *allowed* in consideration of the debtor's *temporary* property in it." Or, if the apposition be thus explained, "with a view to the permanence of *the capital* and to a gain," the permanence of the capital denotes the future revived property of the creditor, and gain signifies interest *received*, duty *fulfilled*, or the like. Consequently, the word "loan" is not employed in a secondary sense, even where no interest is borne; for the phrase, "money-lenders acquire their subsistence by it," relates solely to loans bearing interest; and the transactions of commerce, and the like, connect a price with the thing, and a commodity with the purchase: it is not customary in *traffick* to make a distinction, "this is the principal sum, this the increase:" therefore a capital so employed is not a loan.

It should be here noticed, that, in the first place, the borrower asks for money; next, the lender gives the money, saying or thinking, "so much interest must be paid, and the principal sum be repaid:" property is thereby vested in the user or debtor; for the verb "give" signifies an act vesting property in another, after annulling the agent's own property. Hence, if the debtor happen to lose that money, the loss does not fall on the creditor; and, *from the same cause*, the debtor may at pleasure dispose of what he has borrowed. Afterwards, since, by reason of the agreement made, the amount of the principal sum must be repaid with interest, or an equivalent be given, the creditor's property is *revived* by payment made by the debtor; or if he refuse to pay it, the debtor commits a sin, and is liable to punishment. Creditorship and debtorship are distinguished by some peculiarities;

* Apposition of terms, where the last is chiefly considered, and which is resolvable into the seventh case. The compound *ś'hāna lābha* has been thus resolved into *ś'hāné satyēva lābha*, gain, only if the capital remain.

ties; the definitions are not therefore identical*: it is the same in speaking of undivided brethren, and the like†. The delivery of a loan or debt (*rīnādāna*) is a phrase, not a compound word. To enlarge would be superfluous.

Is not loan on interest (*cusīda*), instead of loan generally (*rīna*), explained by such a definition? This question is answered by the following text.

III.

VRĪHASPATI : — That loan (*rīna*), which, increased to four times or eight times the principal, is *thus* received back, without apprehension of sin, from an abject or distressed person (*cutṣita* and *sīda*), is called a loan on interest (*cusīda*).

“ From an abject or distressed *debtor* ;” from a debtor who is an outcast or otherwise abject, or who is indigent or otherwise distressed. What is received back with interest from such a debtor without apprehension of sin ; without fear of any consequent sin (for such receipt is no acceptance of gift *from an unworthy person*). Hence a loan (*rīna*) is called a loan on interest (*cusīda*).

In this instance there is only the sin of distressing a miserable person ; but there is none if his misery were merely pretended : and even if he were really distressed, the creditor may confer a benefit by prolonging the term of the loan, or otherwise ; and such is the practice.

Should the principal sum only be received back, or should it be received with interest? On this point the Sage says, “ increased to four times or eight times the principal.” The word “ or ” is indefinite ; it also suggests a debt doubled, or the like. Hence it has been already said, “ what is received back with interest.”

* *Ātmāśraya* ; identical. Such definitions are faulty ; as A son of B, and B father of A.

† Apparently liable to a similar objection, that they can only be thus explained : undivided brethren are those who have not made a partition ; and divided brethren are those who do not remain in coparcenary.

interest." Loans quadrupled, and the like, will be explained under the head of Limits of Interest.

Since the words *rīna* and *cusīda*, are used synonymously, the definition of *cusīda* is also the definition of *rīna*: and that is made evident by NÁREDA (I & II). The other text (III) only shows the verbal derivation of the word *cusīda*. This exposition conforms with the opinion delivered in the *Retnácara*. The definition of the word *rīna*, which occurs in the first text (I), is well delivered by a text of NÁREDA (II), although the term be changed in that text. But the word *cusīda* is formed adverbially (*from the particle cu and noun sída*).

By whom a loan should be advanced, NÁREDA declares in the concluding part of the text quoted (II); money-lenders acquire their subsistence by it. The causal has the sense of identity; "even that is their livelihood." Or the word subsistence (*vr̥itti*) in a neuter sense, may signify *their mode of existence*. Money-lenders are men of the mercantile class; accordingly YÁJNYAWALCYA, in the chapter on Modes of Subsistence, says,

YÁJNYAWALCYA : — Money-lending, agriculture, traffick, and attendance on cattle, are declared to be *the proper subsistence* of the mercantile class.

"Money-lending;" placing money at interest. "Traffick;" living on the profits of purchases made at a fair price.

The *Dípacalica*.

V.

MENU: The king should order each man of the mercantile class to practise trade, or money-lending, or agriculture and attendance on cattle; and each man of the servile class to act in the service of the twice-born.

The king should compel a man of the mercantile class to practise trade, money-lending, agriculture, or attendance on cattle; and a man of the servile class to act in the service of the twice-born. If they refuse to do so, they should be amerced by

the king: on that account only it is mentioned in this place (in the eighth chapter, on Judicature; and on Law, private and criminal). CULLÚCABHATTA.

The meaning is, that the expression "the king should compel them to practise, &c." implies, that they should be amerced if they refuse to do so. But if a *Vaisya* do not practise money-lending through apprehensions entertained by him that the loans will not be subsequently repaid, he should not be fined. Since it is declared by MENU, that an *Ambasht'ha* should live by curing disorders*; but since men of mingled births may follow the occupation of their mother's class, an *Ambasht'ha*, adopting the profession of the mercantile class, should not be fined if he do not practise money-lending. To enlarge on the subject of fines, which have been incidentally mentioned, would be superfluous.

For the sake of conferring benefits and the like, any proprietor of wealth may lend money without intending to obtain interest, for that is not prohibited. By those who may practise money-lending, a small part only of their wealth ought to be lent: this being incidentally mentioned, BHAVADÉVA cites the *Mārcandéya purāna*, on the subject of what may not be lent.

VI.

Mārcandéya Purāna:—A prudent man should set apart a fourth of his property for pious uses with a view to another world; and apply half to his own subsistence, and to constant and occasional rites;

2. He should augment the remaining fourth of his property, or half of half, making it his capital: the wealth of him, who acts thus, becomes productive.

The meaning is, that the whole property should not be lent: and if the estate be small, and the family be barely maintained from

* Chap. 10. V. 47.

from it, in that case no loan should be made. Such is the ascertained sense of the text. But if the means of subsistence cannot be provided by the pursuit of their own profession, even priests may place money at interest: this VRĪHASPATI, quoted by BHAVADÉVA, declares.

VII.

VRĪHASPATI:—A twice-born man may practise money-lending, agriculture or trade, not conducted in person; and even practising them in person, during seasons of extreme distress, he is not tainted with sin.

2. Having received gain, let him honour the progenitors of mankind, the deities and priests; when they are satisfied, no doubt they deprecate that offence committed by him.

The word 'twice-born' concerns a man of the sacerdotal class; for it is said "he is not tainted with sin:" if it concerned a man of the commercial class, it would be superfluous to say, "he is not tainted with sin;" for it is not supposed that a man of the commercial class sins by practising money-lending. Men of the military class may also practise money-lending, in seasons of distress; for MENU says, "but a *Brāhmaṇa* and a *Cshatriya*, obliged to subsist by the acts of a *Vaisya*, &c.*" If they can subsist by their regular profession, priests ought not to rely on money-lending for a livelihood, since a text of MENU declares,

But, among those six acts of a *Brāhmaṇa*, (*reading and teaching the Védas, sacrificing and assisting to sacrifice, giving and accepting,*) three are his means of subsistence; assisting to sacrifice, teaching the *Védas*, and receiving gifts from a pure-handed giver†.

And because MENU reprehends the occupation of a *Vaisya* followed by a *Brāhmaṇa*;

His

* Chap. 10, V. 83.

† Chap. 10, V. 75.

His own office, though defectively performed, is preferable to that of another, though performed completely; for, he who *without necessity* lives by the acts of another class, immediately forfeits his own.

His own office (which should regularly be discharged by him), however defectively it be performed, is preferable to that of another, though fulfilled; because, he who lives by the acts of another class, instantly falls from his own: this inculcates the necessity of avoiding such offences. CULLÚCABHATTA.

Here it should be understood, from the expression "he who lives by the acts of another class," that such a practice, whether in person, or not in person, is reprehended. It is also the opinion of eminent lawyers, that penance must be performed for exceeding the rate of an eightieth part and the like, by taking greater interest in a season when no distress is experienced. It would be vain to discuss further the subject of livelihood.

Money-lending may be also practised by a 'Súdra in times of distress; for YÁJNYAWALCYA authorizing traffick, and the *Nerastha purána* authorizing agriculture, which, it may be inferred, are accompanied by money-lending, it is a reasonable induction that money-lending is also authorized: and, according to the opinion of VÁCHESPATI MISRA, it appears that a 'Súdra may receive a gain.

YÁJNYAWALCYA:—A 'Súdra should serve twice-born men; but if he cannot thus subsist, he may become a trader.

The *Nerastha Purána*:—Unasked he should give *alms to priests*, and rely on agriculture for his subsistence.

By whom a loan may be made, and by whom it may not be made, have been both cursorily explained.

SECT. II.—*On the same, and on the Form of the Contract.*

ART. I.—*On the Impropriety of Lending to certain Persons.*

VIII.

CÁTYÁYANA:—Let no man lend any thing to women, to slaves, or to children: whatever thing of value has been lent to them, the lender cannot *in general* recover *without the assent of their guardian or master.*

Nothing should be lent to women, because they are unable to repay it; for it is recorded, that they have no property exclusively their own (Book II. Chap. iv. V. 56.). May not their debts be repaid by their husbands? This should not be affirmed, for it is confuted by a text of YÁJNYAWALCYA, which will be quoted. It should be here understood, that a widow has property in the wealth she possesses; but, since she is very helpless, and only supports herself on the abundant wealth *before* acquired by her husband or the like, out of what funds can she repay the loan? From this apprehension, nothing should be lent even to widows. But if there be any certainty of repayment, then a loan may be made; for this text is *only* a rule of Ethics: and since a loan may be subsequently repaid by her son, there is no objection against a loan made to a woman who has a son, whether she be a widow or have a husband living. Nor do we see any objection against loans made to women who have separate property, on the mortgage of their immoveable property. A debt contracted by a woman, whose husband is absent, for her food and apparel, or for the support of her servants, must be repaid by her lord; and debts contracted by the wives of herdsmen and the like, must also be repaid by their husbands: we hold it
a rational

a rational opinion, that there is no objection against lending money to those women.

Nothing should be lent to slaves, because they also are declared to have no property exclusively their own, by the text above quoted. Here a man's own slave is meant : he should not therefore lend any thing to his own slave ; for what that slave acquires, belongs to *the master* himself. This rule may be applicable to slaves bought : but why should not loans be made to hired servants, for the loans may be repaid out of their wages ? Such a doubt should not be entertained : since a servant only maintains his family with difficulty out of trifling wages, whence can he repay a loan ? But there is no objection against loans made to servants hired on great wages ; and the practice of making such loans subsists amongst excellent persons.

Neither should a man lend any thing to the slave of another, because all his property is dependent on his master : if, therefore, a man do lend any thing to the slave of another, it cannot be demanded from his master. But if the slave of any person ask a loan in his master's name, and it be ascertained that he asks it for the support of his master's family, in that case a loan may be made ; for it is declared by a text of CĀTYĀYANA, that such a debt must be discharged by his master.

IX.

CĀTYĀYANA :—Bhrīgu ordained, that a man shall pay a debt contracted in his remote absence, even without his assent, by his servant, his wife, his mother, his pupil, or his son : *provided it were contracted* for the subsistence of the family.

But when a loan is asked by a servant on his own account, whether he belong to the lender or another person, it may be given on the pledge of his wages ; this will become evident on the further discussion of the subject : these texts will be explained and discussed in another place ; to enlarge would be *now* superfluous.

A youth is a minor to the end of his fifteenth year, as we shall

show in the chapter on the Payment of Debts. *Nothing should be lent* “to children;” this intends generally any person incapable of civil acts, and comprehends idiots and the like. If there be guardians of the minors and the rest, namely their maternal uncles or the like; and these take up a loan from a money-lender, for the benefit of the minor or other ward, executing a deed in the ward’s name and their own; in that case the loan may be legally advanced after ascertaining that the guardian does not act fraudulently: although no text occurs *to this purport*, it is proved by the frequent practice of good men. Afterwards, when the minority expires, the creditor may recover the debt from that youth; but, while the minority lasts, he could only recover it from the maternal uncle, or other person entitled to act *as guardian*. This should be observed by the wife.

Reverend persons, as spiritual parents and the like, to whom harsh discourse cannot be addressed, and who cannot be sued in the king’s courts of justice, may be comprehended under this text, by considering “Children” as an instance adduced of a general meaning. Consequently, to them also nothing should be lent; but a person who possesses wealth must maintain them, else he would fail in his duty.

X.

NÁREDA to INDRA, in the *Herivansa*:—No man, O thou subduer of foes, should have pecuniary dealings with him, from whom he desires much affection, nor visit *his* wife in his absence.

“*His*” must be supplied.—BHAVADÉVA.

“Pecuniary dealings;” the advance or acceptance of a loan; it may also be understood of deposits and the like. The motive *for avoiding such transactions* is the apprehension of forfeiting friendship. But a distinction will be mentioned in another place. It is deduced from the obvious sense of the texts, that a loan may be made to any other person except those to whom it is forbidden to lend any thing.

ART.

ART. II.—*On the Contract of Loan.*

XI.

VRĪHASPATI, quoted by BHAVADÉVA, VÁCHESPATI, and CHANDÉSWARA:—A prudent lender should always deliver the thing lent, on receiving a pledge of adequate value, either to be used by him, or merely kept in his hands; or with a sufficient surety, and either with a written agreement, or before credible witnesses.

Any of these, by which confidence may be given to the lender, should be furnished. They are mentioned generally.—MISRA.

The word *here* employed intends comprehensive illustration. If, therefore, the lender have in his power, by bailment or otherwise, property of more than adequate value belonging to the borrower, this security is also intended by the text. In like manner, where land belonging to any person is taken by another for the purpose of tillage, if the landlord ask a loan of the cultivator, and he advance the loan even without receiving a mortgage of the land, in that case, although there be other creditors, the cultivator, and no other creditor, takes the produce of that land until his loan be discharged: such is the practice. So, if the husbandman ask a loan of his landlord, the landlord, who advances a loan to the husbandman, and no other creditor, seizes the produce of his land, at the time of gathering the harvest, for the payment of the loan he has advanced: this custom also subsists in this country; and on this point there is also the authority of a text of CĀTYĀYANA (CCLXXXI); for there is no objection to consider land and the like as comprehended, in that text, under the word “capital.” This will be discussed under the head of Payment of Debts: *but hence it appears, that land or the like, on which there is such a lien, may be included in the terms of the text.* So in other cases also; for it only intends some ground of confidence in future repayment.

“A pledge of adequate value;” by the price or use of which

the debt may be discharged with interest: such a pledge, whatever it be. It relates both to the pledge to be used, and that to be merely kept in his hands. The use of this condition, *that it should be of adequate value*, is obvious. Both names for a pledge (*ādhi* and *bandha*) are employed by VRĪHASPATI, in a text which will be quoted (LXXX), as bearing the same sense: but here a distinction appears to be intended by the separate mention of them. That distinction, on the concurrent opinions of CHANDÉSWARA, VACHESPATI, BHAVADÉVA and others, is as follows: “*Adhi*” is a pledge to be used; such as land pledged with its produce; a cow, a female buffalo or the like, with her milk; a tree or the like, with its fruit; an elephant, a horse, an ox or the like, to be used for burden; distinguished by this circumstance, that they are not necessarily impaired by use. “*Bandha*” is a pledge not to be used, but merely kept; as a copper caldron or the like, a mass of iron or ingot of gold and the like; distinguished by this circumstance, that they are, or may be, impaired by use. This will be explained at large in the chapter on Pledges. It may be noticed by the way, that a thing pledged should not be hypothecated by the creditor to another person as security for a debt contracted by himself.

“With a sufficient surety;” with a good sponsor: one by whom the sum can be paid. BHAVADÉVA.

The sufficiency of the surety consists in his power to enforce the punctual payment of the money. CHANDÉSWARA.

By these *glosses* both the surety for the advance, and the surety for repayment, are described. One gives security against the absconding of the debtor; he is surety for appearance, and makes a promise in this form, “I will produce this man.” He, in confidence of whose assurance a loan is advanced to any person, is sponsor for honesty; he affirms “this person is unexceptionable.” The sufficiency of the first of these consists in his ability to produce the man if he abscond; or, by keeping *in view* the debtor’s property, to distrain his effects; and so forth. The sufficiency of the last consists in his skilful judgement of a man’s veracity, and so forth. The sufficiency of all *sureties* consists principally in wealth adequate to make good the debt. Accordingly this is actually expressed by BHAVADÉVA. But, in fact, honesty should be considered as a requisite to the sufficiency of a surety;

surety; for much time would be wasted in litigation if a dishonest surety were accepted. It should be understood, that a person, such as a spiritual parent, from whom money cannot be recovered by harsh importunity and other *compulsory* methods, is not a sufficient person in a matter of suretyship, however venerable he be. Of this wise persons may judge from the *simple* exertion of their own intellect. A text of VRĪHASPATI (CXLII) is authority for distinguishing four sureties. That text is explained in the chapter on Sureties.

“With a written agreement” (XI); with a written contract of loan: such a writing is noticed by VRĪHASPATI, cited by BHAVADÉVA.

XII.

VRĪHASPATI:—That mutual instrument which is executed when the loan is delivered and accepted, is called the written contract of loan.

The will to make and receive a loan is the *cause of the contract*. The construction therefore is, “when the loan is delivered and accepted by the will of the parties respectively,” &c. What kind of writing should be given, is declared by NÁREDA, quoted in the *Vyavahāra-tatva*.

XIII.

NÁREDA:—Written evidence is declared to be of two sorts; *the first*, in the handwriting of the party himself, which need not have subscribing witnesses; and *the second*, in that of another person, which ought to be attested: the validity of both depends on the usage established in the country.

An instrument in the handwriting of the party himself is good evidence, even though it be unattested; and, in that of another person, if attested: such is the construction *of the text* by the

relative order of the terms. “On the usage of the country ;” on such usage, in respect of writings, as subsists in each country : on that usage the validity of both depends ; namely of an instrument in the handwriting of the party himself, and of one in the handwriting of another person. The *Vyavahāra-tatwa*.

“Even though it be unattested :” this expression suggests, that an attested instrument in the handwriting of the party is also included, under this text, as a valid document. Thus the sense is, that any attested writing is good evidence ; and one in the handwriting of the party himself is good evidence, even though it be unattested. But, in fact, it is the practice of our country to call to witness the divine form of justice (*Srī DHERMA*) on such writings. An instrument in the handwriting of another person ought to be attested, and there the witness should be human : but even to such writings it is usual to attest the divine form of justice. However, should the party deny an instrument in the handwriting of another, and to which the name of justice is subscribed as sole witness, how can the judge’s doubts be satisfied ? The ingenuous evidence of witnesses should therefore be adduced to prove an instrument drawn in the handwriting of another person.

Is not the scribe himself such competent evidence ? This should not be objected ; for *YĀJNYAWALCYA* declares dubious the evidence of less than three witnesses : and properly these witnesses should be of the same class with the party ; but, if that cannot be, they may be of other classes.

XIV.

YĀJNYAWALCYA :—There should in general be three witnesses ; persons who take delight in acts ordained in the *Vēda* and in sacred law books ; and properly, they should be of the same sex and class with the party for whom they give evidence : but, if that cannot be, those of all classes may be examined*.

Here

* The first and last parts only of this text were cited ; I quote it at large from other Digests.

Here it should be noticed, that attested writings only ought to be given; for, *although* YÁJNYAWALCYA (XV) declares an unattested instrument in the handwriting of the party himself sufficient evidence, yet he also declares it to have no validity if it were obtained by force or fraud: when, therefore, a judicial proceeding is subsequently held, should the defendant plead that it was obtained by force or fraud, then the arbitrators and the king may doubt its validity. For this reason a writing, which has subscribing witnesses, is preferable.

XV.

YÁJNYAWALCYA:—But every document which is in the handwriting of the party himself, is considered as sufficient evidence even without witnesses, unless obtained by force or fraud.

“*Upadhi*” here signifies fraud.

‘Such usage, in respect of writings, as subsists in each country*.’ In some countries the practice is as follows: After an auspicious term (*as* *Sri*), preceded by an epithet allusive to memory (*as* *smaranasíla*), the name of the lender is written in the seventh case and plural number; and the name of the borrower is inserted with the termination of the sixth case before the word “*user*” or *borrower* (*C’hádaca*.) Next, the word “*Casya*” is written: after which a word expressive of bond or obligation for debt is inserted, and declared by the word “*this*” subjoined. Next, the meaning of the parties is stated, the stipulation of interest, the promise of payment, and a binding clause; then, after dating the instrument by the solar month and day, the debtor’s name is again written, with the termination of the sixth case, on the right hand side of the paper; and the designation of place is added. The names of the witnesses are written on the back of the instrument. “The usage established in the country” intends this and other forms. Whatever be the usage in each country, that only should be observed in that country: and the practice above stated is almost *literally* directed by YÁJNYA-

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WALCYA:

* Comment cited from the *Vyaváhara-tatwa* on V. 13.

WALCYA: for he suggests, that the lender's name should be first written, and that the instrument should be dated by the year, month, and day.

XVI.

YÁJNYAWALCYA:—Whatever contract shall have been concluded by mutual consent, a written memorial of it should be attested, after the lender's name has been first inserted:

2. It should bear the year, month, half month, and day, with the designation of the debtor, by his name, class, and the like*.

The epithet allusive to memory is suggested by a text of MENU. It conveys, that this *instrument* is written for the sake of *assisting* memory.

XVII.

MENU:—Even in the space of six months men forget occurrences: therefore were letters and writings anciently invented by the beneficent Creator.

By the custom of the country, instruments are *now* written in the dialect of the *Yavanas*†; but among eminent *Bráhmianas* and others, writings are also drawn in another language. In some written contracts for auspicious rites, as marriage and the like, the word “*swasti*” is first written: its intent is a *prayer*; may this rite be auspicious! This is noticed by the way.

XVIII.

YÁJNYAWALCYA:—When the transaction is completed,

* The first hemistich is not here cited. I insert it from a subsequent quotation in Book V, collated with the code of YÁJNYAWALCYA.

† The Muslemáns.

pleted, the borrower should sign his name with his own hand; *adding*, “what is above written has the assent of me, son of such a one.”

This suggests, that the debtor's name should be written above the contract. We do not determine whether additional matter, as titles and the like, and omissions, as leaving out the name of the party's father or the like, be founded on practice, or on the reason of the law, or, *in the last instance*, originate in indolence.

“Half a month” (XVI); a *side of the month*, that is “a fortnight.” “By his name;” by the name of the debtor. “His class;” the sacerdotal or other class. “And the like;” the *Vêda which he follows in solemn rites*, and so forth.

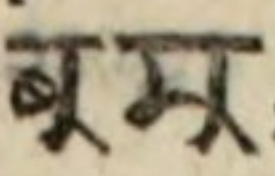
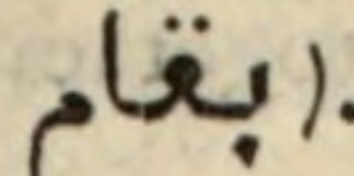
XIX.

YÁJNYAWALCYA declares the form of attestation:—And the witnesses should sign *their names* all together in their own handwriting, after writing the name of their fathers and so forth; *adding*, “I, son of such a one, am witness to this *writing*.”

Here it is, in substance, expressed, that the omission of the name of the witness's father is founded only on usage. If the instrument be in the handwriting of another person, the writer of it should add at the bottom of that instrument, “written, at the request of both parties, by me, such a one, son of such a one.”

XX.

YÁJNYAWALCYA:—Let the writer next subscribe, at the end *of the writing*, “this *has been* written, at the request of both *parties*, by me, such a one, son of such a one.”

But the practice is for the scribe merely to sign his name with the letters , (*standing for* ). All this is *only* mentioned

tioned to obviate the supposition, that the *forms of writings*, which occur in practice, are not directed by Sages.

If the debtor, or a witness, be illiterate, the following text directs the form to be observed in that case.

XXI.

VYĀSA :—But a borrower, who is unlettered, should direct another person to subscribe his *declaration of assent*; or a witness, *in the same predicament*, should cause his name to be signed by another witness, in the presence of all the witnesses.

When these and other local usages are observed, then an instrument in the handwriting of the party himself, and one in the handwriting of another person, are valid, and good evidence of *contracts*. Such is the meaning of the Sage, as expounded by authors. But in fact all this should be considered as intending such a document as may remove the doubts entertained by honest arbitrators or by the king. Else, if all *the parties*, the borrower, the lender, the witnesses, and the writer, be unacquainted with the forms of writings, and a creditor could not recover a debt, though really lent, notwithstanding the existence of an attested writing in any irregular form, there would be a failure of justice on the part of the king. Again; if the instrument were not subscribed by witnesses, but it be said by a witness, “I know this instrument,” and the instrument be admitted in evidence by the arbitrators on any arguments, it is an attested instrument. This is mentioned by the way; the rest may be learnt under the title of Judicial Procedure: but something has been said, in this place, to make known the sort of writing, by which a monied man, who advances a loan, may be secure from losing his cause, should a dispute afterwards arise. This we deem reasonable.

“Before credible witnesses” (XI): this is another case of written agreements; for the presence of witnesses is suggested by the form for drawing written contracts; and the sense of the text appears to be this: He should advance a loan, on receiving a pledge to be used by him, together with a written agreement: this
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is one case. He should advance it on receiving such a pledge before credible witnesses : this forms a second case. So likewise a loan made on a pledge to be merely kept in his hands, forms two cases (*according as it is transacted by a written agreement, or before credible witnesses*) ; hence arise four cases. Again ; two cases arise also on loans made with a sufficient surety ; and the possible cases are six in number. Alluding to this, MISRA has said ; “ any of these, by which confidence may be *given*, should be furnished.” Consequently any one of these six modes, by which confidence may be given to the lender, should be adopted. Here a pledge to be used, or merely kept, as well as a surety, are intended to give confidence to the lender ; and the writing and witnesses, to prove the truth of the loan, if a judicial proceeding be held at a subsequent time.

XXII.

NÁREDA :—In this *contract* there are two things which give confidence *to the lender*, a pledge and a surety ; and two which afford clear evidence, a writing and attestation.

“ Confidence ;” assured expectation of thereafter receiving the loan advanced : in some instances a surety, in others a pledge, *give such confidence* ; for this coincides with the former text (XI). But here the word pledge (*ádhi*) signifies both a pledge to be used and one to be kept. “ Clear evidence ;” certain proof ; sometimes a writing, sometimes attestation, sometimes both, are required, according to circumstances, for the sake of proof in case of dispute.

It should be here noticed, that both texts (XI and XXII) are ethical precepts ; for they exhibit causes of present evil. If, therefore, infringing these rules, a man deliver a loan without a pledge, or writing, or the like, he violates not his duty : and if the debt be anyhow proved, the debtor shall be compelled by the king to repay it to his creditor. Hence the practice of advancing loans without pledge or writing, in some instances of extreme confidence. But excessive confidence should be no-where

reposed ; for the *Herivansa* directs, “ Place not confidence in what is unworthy of confidence, nor excessive confidence *even* in what is worthy of confidence :” and the adage expresses “ mutable mind, mutable wealth.”

In like manner the texts of CATYÁYANA and NÁREDA* (VIII and X) are ethical precepts ; for the text points out a present evil, “ the lender cannot *in general* recover, &c.” Consequently there is no breach of duty in lending any thing even to women ; on the contrary, it is a duty to support unprotected persons, even though it be done by advancing loans : and if the debtor be able to discharge it, the king should enforce payment of such a debt. But a man who infringes the rule, and institutes a suit *on such a debt*, incurs censure. To enlarge would be vain.

Thus a loan should not be advanced *by a money-lender*, without confidence and means of proof : and the meaning of the phrase, “ in what form a loan should not be made,” becomes evident.

* It is not expressed in the original, which is the second text alluded to ; I supply it from conjecture.

CHAP. II.

ON

INTEREST.

SECT. I.—*On Legal Interest in general.*

SUCH interest, as may be taken without a breach of duty on the part of the creditor, is a rule (*dherma*) for delivery *by the creditor*. Or the nature of a thing may be signified by the word *dherma*: as it is the nature of robbers to hurt living creatures, so it is the nature of a loan, that it should produce to the lender the principal sum advanced, and interest in addition thereto. Thus interest is signified by the term “rule for delivery.” MENU propounds that interest.

XXIII.

MENU:— A lender of *money* may take, in addition to his capital, the interest allowed by VAŚISHT’HA, an eightieth part of a hundred by the month.

“Allowed or declared by VAŚISHT’HA;” this shows that it has been authorized by VAŚISHT’HA. Thus, such interest is allowed by all Sages, and is therefore legal: by taking it, a man does not violate his duty. “In addition to his capital;” actually increasing the creditor’s capital, or calculated to do so: *such interest* he may require. But if it be explained, “increasing the debtor’s capital,” *the sense is*, through the medium of moral worth: by discharging the debt with interest, immoral conduct is avoided, and increase of moral worth attained; hence wealth is *also* increased. The purport is, that the money-lender may actually receive such interest; for CULLÚCABHATTA expounds it, “one who subsists by interest, may take, &c.” It might also

signify, “ a loan may produce the interest allowed by VAŚISHT’HA, &c.” and it is also expounded, “ a borrower may pay the interest allowed by VAŚISHT’HA.”

What is that interest? The Sage propounds it; “ an eightieth part of a hundred by the month.” The principal should therefore be divided into eighty parts; and so much as is the quantity of one part, he may take in the same kind of wealth by way of interest, in addition to the principal: if, therefore, a loan, amounting to one hundred *suvernas*, be divided into eighty parts, one part contains a *suverna* and a quarter; and the interest in this case is one *suverna* and a quarter. “ By the month;” at the end of the month.

It is said by some lawyers, that, a hundred being specified in the text, an eightieth part is the rate of interest then only when the loan amounts to a hundred: hence it appears, that the rate of interest varies when the loan is more or less; and such a practice is observable in some countries. On this we remark, that no special rate of interest for loans exceeding a hundred, or falling short of a hundred, has been recorded by any Sage. MENU has not specified whether it be a hundred shells or a hundred *suvernas*; and we shall explain, in its proper place, the text of HÁRITA (XXX) as intending the rate of two in a hundred. But here we consider “ a hundred ” as a mere example; the rate is the same on less sums. VAŚISHT’HA expressly declares the rate of an eightieth part on less than a hundred.

XXIV.

VAŚISHT’HA:—Hear the interest for a money-lender declared by the words of VAŚISHT’HA: five *māshas*, or one *suverna* for twenty *palas*, or eighty *suvernas*; he may claim and should receive each month: thus the law is not violated.

XXV.

GÓTAMA:—The legal interest for twenty *palas* is five *māshas* a month.

On

On this some remark, that the *māsha* is declared by MENU to contain five *crīṣṇālas* or *raēticās*, (“five *crīṣṇālas* are one *māsha*, and sixteen such *māshas* one *suverna* ;”) and the same *māsha* is thus explained by AMERA, “the first *māsha* contains five seeds of the *gunjá*.” Consequently five *māshas* are equal to twenty-five *raēticās* ; and this is the rate of interest on a loan amounting to twenty : such is the ascertained sense. On the question, “twenty of what denomination?” the *suverna*, which is mentioned after stating the quantity of a *māsha*, both in the text of MENU and in that of YAJNYAWALCYA, should be taken, (“five such *crīṣṇālas* are a *māsha*, and sixteen such *māshas* a *suverna* ;”) for five *māshas* can only be the interest on twenty such *suvernas*. Thus a *suverna*, consisting of sixteen *māshas*, contains eighty *raēticās* ; its eightieth part is one *raēticā*, and the eightieth part of twenty *suvernas* is twenty *raēticās*. Twenty-five *raēticās* are intended by the rate of five *māshas* (XXIV and XXV). Consequently an eightieth part is only the rate of interest on a debt amounting to a hundred *suvernas* ; but on a smaller debt, the rate of interest is higher. This is intended by VAŚISHT’HA and GÓTAMA ; and such, it may be argued, is the legal rate on fifty or sixty *suvernas*, or the like, and practice is observed to conform thereto. How then is it said, ‘the rate of interest on less sums has not been recorded by any Sage?’ And why is it said, ‘VAŚISHT’HA expressly declares the rate of an eightieth part on less than a hundred?’

The answer is this : MENU, after saying “a lender of money may take the interest allowed by VAŚISHT’HA,” adds, “an eightieth part of an hundred.” Since it is thence inferred, that VAŚISHT’HA has propounded the rate of an eightieth part, his text must be so explained as to state an eightieth part. That exposition on the text of MENU, which makes the interest allowed by VAŚISHT’HA one case, and an eightieth part of a hundred another case, is not approved by CULLÚCABHATTA. Therefore, the interpretation approved by CHANDÉSWARA, BHAVADÉVA, VÁCHESPATI MISRA, and others, should be admitted, as follows. In these texts twenty *palas* are intended ; and the *pala* should be taken at four *suvernas*, as stated by MENU and YAJNYAWALCYA. Twenty *palas*, therefore, are equal to eighty *suvernas* ; and the eightieth part of that sum, or one *suverna*,

verna, is the monthly interest. But here *māśha*s are mentioned. This apparent incongruity is thus reconciled: the *māśha*, containing five *crīṣṇālas*, as stated by MENU and YÁJNYAWALCYA, must not be taken (for it is not applicable); but the *māśha* stated by VRĪHASPATI, as quoted in the *Retnācara* and *Chintāmeni*, “a *māśha* is considered as the twentieth part of a *pala*.” Thus the twentieth part of a *suverna*, containing eighty *raēticās*, is equal to four *raēticās*; and the twentieth part of a *pala*, containing four *suvernas*, is certainly equal to sixteen *raēticās*, and those make one *māśha*; five of these are equal to eighty *raēticās*, or one *suverna*. Thus there is no inconsistency. Here *suverna* is of the masculine gender; for it is so employed by MENU and YÁJNYAWALCYA, and is so exhibited in the same sense by AMERA; but, in the sense of gold generally, it is of the neuter gender, for AMERA so exhibits it in this sense.

The same should be also understood of other things. The monthly interest on a *purāna* is thus explained: A *pana* consists of eighty shells, and a *pana* is the quantity of a *carśha* of copper, as mentioned by MENU; “but a *carśha* (or eighty *raēticās*) of copper is called a *pana*.” The *carśha* is the fourth part of a legal *pala*; hence expositors say, a *pala* contains four *carśhas*. Consequently the weight of eighty *raēticās* of copper is a *pana*; on this ground, the Ancients established it also at the value of eighty shells: accordingly it is familiar in practice, that eighty shells make a *pana*. A *purāna* contains sixteen *panas*, according to the *Retnācara*; and *purāna* is also practically noticed, for sixteen *panas* of shells, in penances and expiations, and on other occasions. Now the eighteenth part of a *pana* is one shell; of a *purāna*, sixteen shells; of a hundred *panas*, a hundred shells, or one *pana* and a quarter; of a hundred *purānas*, sixteen hundred shells, or twenty *panas*. Or if the money be in silver coins stamped with legends, the interest on a hundred such coins is one coin and a quarter: for, on eighty pieces, it is one piece; and, on twenty pieces, a quarter; which, added together, make one piece and a quarter. But, if the principal be a single piece of money, the rate must be settled by its value. If its value be four *purānas*, then sixty-four shells are its eightieth part; and so in all cases.

Again: If the debt consist of kine, or the like, the interest should

should be settled on the value. It should not be affirmed, that they cannot constitute a debt; for the limit of interest on cattle is mentioned (LXV.) Why such a practice does not occur, we know not. Something, however, may be mentioned to explain the *received* distinctions in these cases. If a man happen to deliver a cow, or the like, as a loan, the interest may be received on her value; but a great offence is committed; for the sale of a cow is forbidden in moral law: however, a goat, a calf, or the like, may be taken by way of interest, without any offence on the part of the receiver; and the debt should be discharged by returning the thing itself, or something of the same nature; as already stated by MISRA. But, in this case, it should be returned unblemished; or another cow, or the like, or other thing of equal value, should be delivered. Whatever it is forbidden to sell and give away, should not be delivered as a loan; for the offence is equal. But a *Bráhmāna* may advance lac, salt, or the like, by way of loan; for there is no more offence in lending, than in giving those things; and the offence is restricted to the sale of such things: however, at the time of repayment, the value of the salt, or the like, and of interest accruing on it, should not be received; for *that would equal* the offence of selling it. The interest should be of the same nature with the thing lent; for interest is propounded at the eightieth part of the thing lent.

To revert to the explanation of both texts (XXIV and XXV); the institutes of VAŚISHT'HA and others were composed by their pupils, who heard the purport of what they record, from the mouth of VAŚISHT'HA and the rest: hence it is said (XXIV), "declared by the words of VAŚISHT'HA;" as in the ordinances of MENU, it is said, "MENU ordained."

"Legal," in the text of GÓTAMA (XXV), signifies justifiable in law, that is, not illegal; for it coincides with the expression in the text of VAŚISHT'HA, "thus the law is not violated" (XXIV.) Or the sense may be this; he who takes interest allowed by codes of law, which may produce religious merit by means of pious oblations made therefrom to Deities and *Bráhmanas*, and so forth, has the complete benefit thereof, if he actually do make such oblations to deities and priests; not so he who celebrates rites with wealth acquired by theft or by other nefarious means. As is declared by

MENU:—Neither a priest nor a military man, *though distressed*, must receive interest on loans; but each of them, if he please, may pay *the* small interest *permitted by law, on borrowing* for some pious use, to the sinful man, *who demands it**.

Which is expounded by CULLÚCABHATTA, “may advance a loan on small interest, for some pious use.”

“Legal interest” (XXV); interest authorized by law, at the rate of five *māshas* for twenty *palas*. The *Retnācara*.

We expound the text (XXV), “the quantity of five *māshas* is the interest for twenty *palas*,” or interest appertaining to twenty *palas* (*supplying the word “pala” by a secondary sense of “twenty”*); that interest accrues on a sum of twenty *palas*. But some read “twenty” in the fifth or sixth case (*vinfatéh instead of vinfatíh*). That is wrong, for it is not approved in the *Retnācara*. The sense, according to regular construction, is thus: “the quantity of five *māshas*, as interest appertaining to twenty *palas*, is legal.”

“A month;” here “*for*” must be supplied. In every text where “month” is not specified, but interest at the rate of an eightieth part, or the like, is mentioned, the word “month” must be understood: and the month is according to *śāvana* time, consisting of thirty days and nights; not the *śaura* month from the sun’s departure from one sign to his departure from another sign. For RAGHUNANDANA, in commenting on texts quoted in the *Mala māsa tatwa*, (“certain sacrifices and acts of devotion are to be regulated by *śāvana*† time; so is impurity after childbirth, and the like; and so are all popular and forensick transactions”) says, that under the term “and the like,” wages, interest, and the like, should be comprehended. Hence it is inconsistent with law to regulate civil contracts by *śaura* or solar time. It would be a great disparity, were a *whole month’s* interest, at the rate of an eightieth part, or the like, paid upon a loan taken on the last day of the sun’s passage through one sign, and

* Chap. 10. v. 117. I do not alter the translation, which conforms to the literal sense of the text, though it consist not with the comment and the purpose of the quotation. See Book II. chap. 4. v. 23.

† VYΔ’sA in the *Viṣṇu-dharmōttara*.

and repaid on the following day; and no interest paid on a debt contracted on the first day of *the solar month*, and discharged on the last day of the same month. This should be determined by the wife.

Here interest for one month is declared by Sages to be the eightieth part of *the principal*; but if the period exceed one month, the same rate is directed for each month: since the expression implies repetition, it follows, that the interest shall be an eightieth part for every month respectively: and if the period be less than a month, it appears that the interest should be computed by a subdivision of that rate; else a disparity would arise, no interest being payable on a debt discharged within one day of a complete month.

A greater or less fine, or other *decision*, should not be regulated by very minute distinctions.

But some attend in practice even to minute variations in fines, and the like.

XXVI.

VRIHASPATI, quoted in the *Retnācara*:—The eightieth part accrues *monthly on the principal*; and if *the interest be received*, the loan is doubtless doubled in a third of a year less than seven years; that is, in *six years and eight months*.

“Accrues;” it is the interest for each month. If the interest be received, the loan advanced is doubled. Or the seventh case may be here used in the sense of the third, “the debt is doubled by accumulation of interest.” In what time? The Sage replies to this question, “in a third of a year less than seven years.” Divide a year of twelve months into three parts; each part contains four months; that deducted from seven years, leaves six years and eight months. Thus, if the debt amount to one hundred *suvernas*, the monthly interest is one *suverna* and a quarter; the annual interest is twelve *suvernas* and twelve quarters, or fif-

teen *suvernas*; the interest in three years amounts to forty-five *suvernas*; in six years to twice that sum, or ninety *suvernas*: interest for eight months is eight *suvernas* and eight quarters, or ten *suvernas*; which, added to ninety *suvernas*, make a hundred, or the same amount with the original debt: consequently, added to the principal sum, it doubles it. This is mentioned by VRĪHAS-PATI, to prohibit further interest, after a loan in gold, silver, or the like, has been doubled by interest. This will become evident under the title of Limited Interest.

This rate of interest is ordained, if a pledge be given; VYĀSA propounds a distinction if a surety be given without a pledge, or if neither be given.

XXVII.

VYĀSA:—Monthly interest is declared to be an eightieth part of the principal, if a pledge be given; an eighth part is added, if there be *only* a surety; and if there be neither pledge nor surety, two in the hundred *may be taken from a debtor of the sacerdotal class*.

“An eightieth part;” the eightieth. The *Retnācara*.

That is, one part in eighty parts. Here a pledge intends a pledge to be kept; for, in a gloss on the text previously quoted from MENU (XXIII) to the same purport with this text, the *Retnācara* states, “this concerns a pledge to be merely kept.” The meaning is this—In the case of a pledge to be used, since the use of the pledge is the only interest, the rate of an eightieth, or the like, is inapplicable: all this will be explained under the title of Various Sorts of Interest.

A pledge to be kept, is one which would be impaired by use; a pledge to be used, is one which is not *necessarily* impaired by use. Here it should be noticed, that if a man contract a debt, mortgaging land, or the like, to be used, and say, “the use of the land shall be the only interest,” in that case, since there is no other interest but the use of the pledge, the rate of an eightieth part, or the like, is inapplicable. But if he say, “this land is
2 mortgaged

mortgaged to you ; paying your interest from its produce, I shall discharge the principal from the surplus ; or, if the produce be insufficient, I will make good the interest, delivering either money or goods ;" in that case the rate of an eightieth part is applicable even to a pledge to be used.

Is it not the law, that, when land or the like is pledged, the entire use of it should of course be taken by way of interest ? On the contrary, usufruct in excess is reprehended by a text, which will be quoted from VRĪHASPATI (XXXV 7). It should not be argued, that a pledge delivered for use is a pledge to be used, and one delivered merely for security is a pledge to be kept. The forfeiture of the whole interest will be denounced against the unauthorized use of a pledge to be kept ; and the forfeiture of half the interest, against the unauthorized use of a pledge to be used. It is said in the *Dīpalicā*, " if a pledge to be kept, that is, one which should be securely preserved, as clothes, ornaments, and the like, be used, no interest *shall be received*." It is not said, " a pledge to be kept, that is, one not delivered for use ;" but, " *a pledge to be preserved*, as clothes, ornaments, and the like." The proper place for this disquisition is the chapter on Pledges. Since many texts are there cited, to expatiate in this place would be idle.

" An eighth part is added " (XXVII) ; and that is an eighth part added to an eightieth part. Hence, two *panas* less than two *purānas*, or one *purāna* and fourteen *panas*, are received, if there be only a surety. The *Retnācara*.

In that book, a debt amounting to one hundred *purānas* had been already supposed : hence, in this case also, the rate of interest denoted is two *panas* less than two *purānas* on a hundred *purānas*. But, in the gloss on this text, the letter M is an error of the pen, (*aśītyaśhtamabhāgaśahita* instead of *aśītyaśhtabhāgaśahita*,) for the text exhibits *śāṣṭābhāga* with eight parts. Consequently the sense is *an eightieth part* joined to eight part, and the portion not specified must be a sixteenth on the authority of usage. Thus, whatever be the amount of an eightieth part, eight parts are half of that amount. But, in this case, an eightieth part is twenty *panas*, and these, added to half that amount, make thirty *panas*, or two *panas* less than two *purānas*.

But some, noticing another reading in the commentary on

YĀJNYAWALCYA, *śhaṣṭi'hibhāga*, instead of *śaṣṭabhāga*, say, the interest should be a sixtieth part, if there be only a surety: and this, they say, is fit. If there be neither pledge nor surety, the interest is two *purānas* for a hundred *purānas*, as ordained by the text (XXVII). If a pledge be given, twenty *panas* are the interest prescribed. But in this case, a pledge having been given, the confidence is greater; for a chattel of equal value is in the creditor's power. If there be neither pledge nor surety, no confidence exists; for payment rests on the will of the debtor: in this last case, therefore, the interest, ordained by sages for a hundred *purānas*, is greater by twelve *panas*: and this is consistent with the reason of the law. Now, if there be only a surety, confidence is given, but there is a possibility of trouble. For instance; a man advances a loan on this consideration, "if my debtor do not repay the loan, even then I shall subsequently recover it from his surety by a suit at law;" in that case trouble *may be apprehended*, for the recovery is effected by the trouble of litigation. It is therefore proper, in such a case, to take, in addition to the twenty *panas* allowed, where a pledge is given, six *panas*, or half the additional twelve *panas* allowed on loans without security. Now this nearly agrees with the rate of a *sixtieth part*. In dividing a hundred *purānas* into sixty parts, first take one *purāna* for each part; this disposes of sixty *purānas*, and forty *purānas* remain. Again, set half a *purāna* towards each part, thirty *purānas* are disposed of, and ten *purānas* remain; and each part is one *purāna* and a half, *with a further fraction from the remainder*. Reduce the ten *purānas* into *panas*; the result is a hundred and sixty *panas*: setting two *panas* to each part, the portions amount to one *purāna* and ten *panas*; a hundred and twenty *panas* are disposed of, and forty *panas* remain. Again, set half a *pana* to each portion; thirty *panas* are disposed of; the sixtieth part amounts to one *purāna* and ten *panas* and a half, *with a further fraction*; and there remain ten *panas*, or eight hundred *cauries*. Distribute thirteen *cauries* to each share, seven hundred and eighty *cauries* are disposed of; and the sixtieth part of a hundred *purānas* amounts to one *purāna* ten *panas* and fifty-three shells, with a fraction of one third from the remaining twenty shells, which may be *more accurately* divided by those who are skilled in the notation taught by SUBHANCARA. The amount

amount of fifty-three shells and a third is, they say, but a small excess above the rate of interest, which, in their opinion, is reasonable; neglecting, therefore, minute differences, interest may be taken at the rate ordained by the sage, namely a sixtieth of the principal, if there be only a surety:

VÁCHESPATI MISRA, not acquiescing in either of these interpretations, expounds the text otherwise in his Digest. "An eighth part is added;" the eighth part of an eightieth part is added to an eightieth part. Hence the interest on the sum of twenty *palas* of gold, is ninety *raeticās*. His meaning is this; *śāṣṭabhāga* signifies joined to one part in eight parts. The answer to the question, "part of what?" is drawn from the nearest term, "an eighth part of an eightieth." Thus, an eightieth being divided into eight parts, one such part is added. But the interest at an eightieth part of the principal, is ascertained in the case proposed; the eightieth part of twenty *palas*, or eighty *suvernas*, is equal to eighty *raeticās*, or one *suverna*; to which the eighth part of it, or ten *raeticās*, being added, the result is ninety *raeticās*. According to this exposition, twenty *panas*, which are the eightieth part of a hundred *purānas*, added to the eighth of that, or two *panas* and a half, make twenty-two *panas* and a half, the rate of interest on a hundred *purānas*, if there be only a surety: and the same method should be practised in the case of silver coins, and the like. On this opinion also, we do not discover why the letter M occurs in the gloss (*Aṣṭamēnabhāgēna*).

A thorough examination of these opinions, to select the best, must depend on the mental faculties of intelligent inquirers. On what proof or argument it is held, according to the opinion delivered in the *Retnūcara*, that the portion not specified is a sixteenth, must remain a question: the other reading (a sixtieth part) is not admitted in the *Retnūcara*, nor in the *Chintāmeni*; for in both the text is thus explained, "an eighth part is added:" and in the commentary on YÁJNYAWALCYA, where this reading occurs, the text is not expounded. Whether the cerebral S be not an error of the copyist, is a question on the second interpretation. On MISRA's exposition, the question is, how the interest, where a surety only is given, should so little exceed the rate of interest where a pledge is given.

“ If there be a surety ;” the sense is, if there be only a surety ; for higher interest would be improper, if there were both a surety and a pledge.

“ If there be neither pledge nor surety (*nirādhāné*) ;” here the word *ādhāna* signifies both pledge and surety ; hence, if there be neither surety nor pledge, two *purānas* are received on a hundred.

The *Retnācara*.

The derivation of the word is, “ what is placed (*ādhiyatē*) for the sake of taking up a loan * ;” and that description is applicable both to a pledge and a surety. The privation of both sorts of security is *nirādhāna*, want of pledge and surety. Or the word *ādhāna* may be restricted to pledges : thus, because an eighth part is directed to be added, if there be no pledge but a surety only, therefore, by the regular form for general rules, and exceptions to these rules, the remainder of the text relates to a different case of loans without a pledge ; that is, one without pledge or surety. Ultimately there is not, in our opinion, any difference.

On this subject an observation should be made. The servant of some person asks a loan of a money-lender ; he replies, “ give a surety or a pledge :” the servant requests his master to become his surety, that he may obtain a loan from this money-lender ; his master replies, “ I will not be thy surety, but I will promise him thy wages :” accordingly the servant’s master tells the money-lender, “ I will not pay him his wages, unknown to you ;” and the money-lender, confiding therein, advances a loan to him. In such a case, is it a loan with a pledge, or with a surety ? Not the first ; since the servant’s master only intervenes, and is not in the nature of a thing belonging to the servant, there can be no pledge : nor is it of the second description ; for this servant’s master is not comprehended under any of the descriptions of sureties enumerated, sureties for appearance, for honesty, for payment, and for delivery. The servant’s master does not say, “ I will produce this man if he abscond ;” nor, “ that man is trust-worthy, and will not be averse from repaying a loan received :” neither does he say, “ if the debt be not discharged by him, I will make good the sum ;” nor, “ I will recover the amount from him, and discharge the debt.” How then can he

* See a different etymology at V. 81.

be a surety? The debt must consequently be one for which there is neither pledge nor surety: this again is not true in reasoning; for there is a motive of confidence. On this proposed case it is said, this is a debt for which a surety is given: although the servant's master is not positively comprehended in the four descriptions of sureties, yet, as that enumeration is a mere illustration, it must be admitted that such a person is a surety; and if the servant's master break his own promise, he must discharge the debt. The interest should therefore be an eighth part added to an eightieth; or the wages may be considered as a pledge. In that case the debtor's assent is given to the hypothecation; and a declaration being made by the debtor to that effect, the servant's master is certainly surety for delivery of the pledge, not for payment of the debt: *but*, although there be no promise of payment, there is a lien on the *promised* delivery of the pledge; and a lien prevents seizure by any other creditor. The interest, therefore, should, in this case, be one eightieth part only of the principal. But, if he do not perform his work, then, no wages being earned, how is the debt discharged? To this it is answered, does the servant's master dismiss him without a fault? If so, the servant's master is amenable: the servant being faultless, and the master needing another servant, this servant should not be dismissed; for his dismissal could only originate in malice. This is consistent with reason. But, if the servant were faulty, his master would not be amenable *for dismissing him*: and, when his dismissal takes place, the debt should be paid with interest, or a new pledge be given; for this case is the case of a pledge destroyed by the act of God (CI, &c). But, if the servant desert his master without provocation, in that case a surety must certainly be given, if he cannot immediately discharge the debt, nor give another pledge; or, on failure thereof, the debt from that day becomes a debt unsecured by a pledge, and bears interest at the rate of two in the hundred. A man received a loan on the mortgage of a piece of land, pointed out by him in this form, "I will pay thee from the produce of the present year; the produce of this land is thy pledge." This debtor meditated a fraud, and gave no attention to culture, reflecting, "the produce of this land is my creditor's only; no benefit will arise to me from it: if no produce be obtained, what can the creditor do?"

do?" As in this case chastisement is proper, and interest should be computed at the rate of two in the hundred from the day when he neglected the culture of the land; so, in the case supposed, where the servant quits an unoffending master, thinking labour vain, *which is undergone* for the sole purpose of discharging his debt, we hold it reasonable that he should incur punishment. So long as he performs work, his wages for that period belong to the creditor, and no other person; because those wages are pledged to that creditor: and this pledge falls under the description of a pledge to be kept. After the undertaking supposed, if the servant's master also advance him a loan on any terms, and he only perform service for a short time, so that both cannot be paid out of his wages; what is the rule of decision in that case? The apparent difficulty may be reconciled in the same manner with the case where a man renting land for cultivation from one person, contracts a debt to another, and subsequently receives a loan also from his landlord, both which debts cannot be paid from the produce of that land. Half of the grain produced both from the use of land and by corporal labour belongs to the owner of the land, half to the husbandman. In this case the husbandman's share, not yet gathered, is pledged to one person; but no act amounting to hypothecation has been done by the owner of the land: hence, the produce may be taken by the first creditor, but the landlord retains in his power the grain produced from his own land until his own demand be satisfied. Such is the practice in some instances. It cannot be asserted as a maxim, that the land must of course be left another year in his tillage, and that the debt may be paid from the produce of the following year. Since his tillage may be found defective, or he may be detected in knavery or the like, his tillage does not continue without the consent of the landlord. This, and other inferences, may be drawn from reasoning.

XXVIII.

YAJNYAWALKYA:—An eightieth part *of the principal* is the monthly interest, when a pledge has been
been

been delivered: otherwise, it may be, in the direct order of the classes, two, three, four, or five in the hundred.

“Otherwise;” in cases other than that of a pledge delivered; that is, when no pledge has been given. Since the text has the same tenor with that of VYÁSA (XXVII), it must be also understood that no surety was given. For a debt of one hundred *suvernas*, two *suvernas* should be paid to a *Bráhmaṇa*; three *suvernas* to a *Cshatriya*; four *suvernas* to a *Vaisya*; five *suvernas* to a *Súdra*.

XXIX.

MENU:—If he have no pledge, a lender of money may take two in the hundred by the month, remembering the duty of good men: for by thus taking two in the hundred, he becomes not a sinner for gain.

2. He may thus take, in proportion to the risk, and in the direct order of the classes, two in the hundred from a priest; three from a soldier; four from a merchant; and five from a mechanic or servile man, but never more, as interest by the month.

“Of good men;” reflecting that such is the duty of good men. CULLÚCABHATTA.

“Two in the hundred” (XXIX 1); this concerns a *Bráhmaṇa*. In answer to the question, what is the rate for other tribes, he repeats the interest payable by priests, and declares the rates for other classes (XXIX 2).

“But never more” (*samam*); literally signifying, uniformly or equally; that is, neither more nor less. CULLÚCABHATTA.

But we hold, that “equally” is expressed for the purpose of showing that as a priest becomes not a sinner for gain (that is, does not contract the sinful taint arising from the undue receipt of

of money) by taking two in the hundred, so a soldier, who takes three in the hundred, is not a sinner for gain.

Thus, according to CULLÚCABHATTA, CHANDÉSWARA, BHAVADÉVA, VÁCHESPATI MISRA, and others, an eightieth part of the principal is the monthly interest, when a pledge is delivered; but two in the hundred, if there be no pledge.

The *Médhātī'hi* and GÓVINDA RÁJA expound the text of MENU (XXIX), 'If a man in distress cannot provide for his wants on the interest first mentioned, he may take two in the hundred, or the like.' For the text of YÁJNYAWALCYA (XXVIII) solely concerns loans secured by a pledge: and there is no objection to this explanation of the word "otherwise;" in a case other than that of a man who can provide for his wants, as implied in the former part of the text; that is, where he cannot do so. Here it may be questioned, what should be the application of the text of VYÁSA (XXVII); for a pledge is there signified by the word *ādhāna*. Although the text might be well applied by anyhow explaining it "provision for wants," yet there would be no determined rate when no pledge is delivered: if the rate were the same for loans with or without a pledge, the expressions in the texts of YAJNYAWALCYA and VYÁSA, "when a pledge has been delivered," and, "if a pledge be given," would be unmeaning. But the receipt of two in the hundred, and the like, is authorized by the *Médhātī'hi* and other commentaries, on the authority of the phrase, "he becomes not a sinner for gain" (XXIX), which they apply to the case of utmost distress, for the purpose of obviating the doubt whether a man become a sinner by taking two in the hundred. The case of absolute inability to provide for wants might exist, as well as the case of a loan unsecured by a pledge as stated by YÁJNYAWALCYA. However, this *exposition* should not be admitted, because it is disapproved by CHANDÉSWARA, VÁCHESPATI MISRA, BHAVADÉVA, and many other authors. To expatiate would be vain.

On the subject of loans without a pledge, the following text propounds a rule.

XXX.

HÁRĪTA :—For twenty-five *purānas* (or four hundred

dred panas) of copper, lent without either pledge or surety, the interest may be eight *panas* a month; and the principal being doubled in four years and two months, bears interest no longer: such interest is legal; and the lender violates no duty by taking it.

“Being doubled;” becoming two-fold: and the interest is therefore two in the hundred by the month. “Bears interest no longer;” interest ceases. The *Retnâcara*.

Interest is settled at rates varying in the order of classes, on loans made without receiving a pledge. By parity of reasoning, different rates should be also inferred, in the order of the classes, when a pledge or surety is given. As is directed by VÁCHESPATI; ‘interest should also be similarly regulated, in the order of the classes, on loans secured by a pledge and the like.’

Does the order of the classes relate to the borrower or lender? CHANDÉSWARA holds, that it relates to the debtor; for he says, ‘both these texts concern a *Brâhmana* contracting debts;’ and again, ‘he may receive interest at these rates from a priest, a soldier, a merchant, and a mechanic respectively:’ and this is consistent; for it is expressed in the text of MENU, “He may thus take, in the order of the classes, (from *Brâhmanas* and the rest,) two in the hundred, and so forth;” and there is no difficulty in explaining the text of VISHNU (XXXI), “may receive from his debtor, in the direct order of all the classes, two in the hundred, and so forth.”

XXXI.

VISHNU:—But a creditor may receive interest at due rates from his debtor, or *may take from him*, in the direct order of all the classes, two, three, four, or five in the hundred by the month.

The sense of the text is as follows: “at due rates;” an eightieth part of the principal, or an eighth added to an eightieth: such a proportion he may take by way of interest. In regard to loans

loans without pledge or surety, the Sage adds, “two, three, four, or five in the hundred, &c.”

VIJNYÁNÉŚWARA also holds, that the order of the classes respects the borrower. But, in VÁCHESPATI MISRA’s opinion, it respects the lender: accordingly he says, “A *Vaisya* infringes no duty by taking interest at the rates prescribed in this text of MENU, and in other places; nor do *Bráhmanas* and the rest *infringe any duty*, by doing so in a season of distress.” Here stating generally, that a *Vaisya* infringes no duty, he adds, “nor *Bráhmanas* and the rest, in a season of distress:” since there is no other term in that phrase to which the words can be referred, the meaning of what he says is this, “a *Vaisya*, in all circumstances, and *Bráhmanas* and the rest, in distress, infringe no duty by taking *such interest*.” What is the sense of MENU’s text, consistently with this opinion? *It is as follows*: “In the direct order of the classes;” according to the order of the class to which he belongs, the lender may take, &c. We think, the order of classes should be considered as relating both to the lender and borrower, on the authority of both commentators, CHANDÉSWARA and VÁCHESPATI. Thus the contemplative Sage

XXXII.

YÁJNYAWALCYA ordains: — All borrowers, who travel through vast forests, may pay ten, and such as traverse the ocean, twenty in the hundred, to lenders of all classes, *according to circumstances*, or whatever interest has been stipulated by them, *as the price of the risk to the lender*.

Or whatever interest has been stipulated by them, all borrowers should pay to lenders of all classes. Those who travel by difficult roads, or traverse the ocean, for the sake of commerce, should pay ten *panas*, or twenty *panas* respectively, on the hundred *panas*, if no pledge have been given. Greater interest is paid on account of the risk of losing the principal.

‘SÚLAPÁNI in the *Dípacalicā*.
But, if there be a pledge or surety, the interest should not exceed the rates prescribed, for there is not such a risk of losing the principal.

principal. "Ten Panas;" the meaning is, a lender may take one part in ten.

The Sage declares an alternative in respect of the prescribed rates of two and three in the hundred, and the like: "or whatever interest has been stipulated by them." The *Dīpācalicā*.

All borrowers, *Brāhmanas* as well as others, should pay to lenders of all classes, *Brāhmanas* as well as others, whatever interest has been stipulated by them. Whether a pledge have been delivered or not, they must pay the interest, which has been promised by them in this form, "this interest shall be paid by me."

CHANDÉSWARA reads *śwacṛitām*, stipulated by the borrower himself. BHAVADÉVA reads *śucṛitām*, which he explains, "allowed by all sages, namely, the eightieth part of the principal and the like." According to CHANDÉSWARA, this interest falls under the description of *cāritā*, or interest stipulated by the borrower. But according to BHAVADÉVA, the two cases may be reconciled by referring them to circumstances, in which a lender can or cannot *part with his money on the terms generally prescribed*. CHANDÉSWARA's interpretation should be admitted, for his reading is approved by VIJNYĀNEŚWARA and 'SÚLAPĀNI.

If the order of classes were referred to the borrower only, interest not varying on loans made by persons of the several classes, there would be no purpose in saying, "to lenders of all classes" (XXXII). If it be referred to the lender only, interest not varying on debts contracted by persons of the several classes, there would be no purpose in saying, "all borrowers" (XXXII). It should not be argued, that the expression "all borrowers," intends all, whether traversing the ocean or not, and so forth. This would be inconsistent with the mode in which the text is cited; "the Sage declares an alternative in respect to the prescribed rates of two and three in the hundred and the like." Accordingly MISRA also, in his gloss on the text of CĀTYĀYANA (LVI), says, "after the lapse of six months, interest should be paid by a 'Sūdra at the rate of five in the hundred." Since otherwise he must contradict himself, it should be understood as the opinion of VÁCHESPATI MISRA, that the order of classes relates both to the lender and borrower.

XXXIII.

XXXIII.

MENU :—Whatever interest, or *price of the risk*, shall be settled *between the parties*, by men well acquainted with sea voyages or journies by land, with times and with places, such interest shall have legal force.

Is not this text of MENU incompatible with the text of YÁJNYAWALCYA (XXXII)? For the text of MENU is fully explained in the *Retnácara*. “Men well acquainted with sea voyages;” mentioned merely as an instance suggesting a trader in general: “With times and with places;” who see that so much is the profit at such a place: “Legal force;” adjudication: therefore such interest should in such a case be adjudged. It is evident from the purport, since the term used in the text is explained adjudication, that the interest should be regulated according to the time, place and thing; the commentator says as much, by adding, “such interest should be adjudged:” the payment of ten and twenty in the hundred is, therefore, inconsistent with the obligation to pay the interest settled by men trafficking by sea, and the like. This should not be affirmed: the text of YÁJNYAWALCYA should be considered as applicable to the case where no specific rate of interest has been settled. VÁCHESPATI, in his gloss on the text of MENU (XXXIII), says, “they settle greater interest, expecting large profit from traversing the ocean.” Alluding to this, HARÍTA says, some allow interest at the rate of a *pana* for a *purána*.

XXXIV.

HARÍTA :—Some allow a *pana* each month for one *purána*, or a *sixteenth of the principal*.

But CHANDÉSWARA says, this text (XXXIV) concerns a borrower of a mixed class. That may be questioned; for, the text being explained by referring it to traders by sea, it is useless
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to extend it to borrowers of a mixed class; and no Sage has propounded a higher rate of interest payable by mixed classes.

SECT. II.—On Special Forms of Interest.

XXXV.

VRĪHASPATI:—Learn, from their properties, the various sorts of interest declared to be four; or according to some, five; and according to others, six:

2. *Cáyicá*, corporal; *cálicá*, periodical; *chacravriddhi*, compound interest; *cáritá*, stipulated; *'sic'hávriddhi*, daily interest; and *bhógalábha*, interest by enjoyment.
3. *Cáyicá* is connected with (*cáyá*) the body of a pledged animal; *cálicá* is due monthly; interest upon interest is *chacravriddhi*; and interest stipulated by the borrower is *cáritá*:
4. When interest is received at the close of each day, it is called *'sic'hávriddhi*, or hair-interest; because it grows daily, like hair, which can only cease growing on the loss of the head.
5. Thus the daily interest can only cease by the payment of the principal, and hence it is called *'sic'hávriddhi*: the rent or use and occupation of a pledged house, or the produce of a pledged field, is called *bhógalábha*, interest by enjoyment.
6. Interest payable at the close of each day, and *cáyicá*, or interest accruing from a pledged body, as well as interest by enjoyment, the creditor shall receive entire, so long as the principal remain unpaid:

7. *But* the use of a pledge after twice the principal has been realized from the usufruct, compound interest, and the exaction of the principal and whole interest after a part of it has been liquidated, is usury, and reprehensible.

XXXVI.

NÁREDA:—In law, interest on loans is of four kinds: *cáyicá*, *cálicá*, *cáritá*, and *chacravṛiddhi*, or interest paid on an undiminished principal, periodical interest, stipulated interest, and interest on interest.

2. Interest at the rate of one *pana*, or of half or other fraction of a *pana*, repeatedly paid without diminishing the (*cáyá*) principal, is named *cáyicá*; but that which runs by the month, is considered as *cálicá*, or payable at a (*cálu*) time certain.
3. That interest is named *cáritá*, or stipulated, when the debtor of his own accord has agreed for it; and interest upon interest is declared to run like a wheel.

But the author of the *Mitácsharâ* reads a quarter of a *pana* instead of half a *pana*.

XXXVII.

CÁTYÁYANA:—Stipulated interest is that which has been specially and freely promised by the debtor, in a time of extreme distress, above the allowed rate;

2. And in that case, but in no other whatever, stipulated interest must *always* be paid.

3. Where

3. Where a loan is made on an agreement that the whole use and profit of a pledge shall be the only interest, it is called *a loan on the use of a pledge* (*àdhibhóga*).

XXXVIII.*

YÁJNYAWALKYA :—Interest on interest is *chacra-vriddhi*; monthly interest is *named cálicá*; that which is stipulated by the party himself, is *cáritá*; but *cáyicá* accrues from the body of a pledged quadruped.

2. A debt, secured *merely* by a written contract, shall be discharged, *from a moral and religious obligation*, only by three persons, *the debtor, his son, and his son's son*; but a pledge shall be enjoyed until actual payment of the debt *by any heir in any degree*.

XXXIX.

VYÁSA :—That interest is called *cáyicá*, which arises from (*cáyá*) the body of a *pledged* female quadruped to be milked, or a male animal to work or carry burdens.

XL.

GÓTAMA :—Some hold, that no *lender should receive* interest beyond the year.

A rule, says MISRA, *abridged* from the following text of MENU.

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XLI.

* The text numbered XXXII is again cited in this place; and the second verse of this number is again cited at CCXXIX.

XLI.

69
infra
109. h.

MENU:—Let no lender *for a month, or for two or three months, at a certain interest*, receive such interest beyond the year; nor any interest, which is unapproved; nor interest upon interest by *previous agreement*; nor periodical interest *exceeding in time the amount of the principal*; nor interest exacted from a debtor *as the price of the risk*, when there is no public danger or distress; nor immoderate profits from a pledge to be used by way of interest.

CULLÚCABHATTA explains "unapproved," unseen; or he so reads the text (*adrīṣtam* instead of *adishtam*).

XLII.

MENU:—Stipulated interest beyond the legal rate, and different from the *following* rule, is invalid; and the wise call it an usurious way of lending: the lender is entitled *at most* to five in the hundred*.

XLIII.

111
151

MENU:—Interest on money received at once, *not year by year, month by month, or day by day, as it ought*, must never be more than enough to double the debt, *that is, more than the amount of the principal paid at the same time*†.

XLIV.

* Before this text, the compiler again cites the text numbered XXXIII. A different construction is put upon the text by commentators. See the exposition numbered V.

† The remainder of this verse is cited in a subsequent Section (V. 61). The first part of the following text has been already cited (XXXIV).

pag. 109

XLIV.

HÁRITA :—Some allow a *pana* each month for one *purána*, or a *sixteenth* of the principal.

2. Grain, *borrowed before the harvest*, may be doubled or at most trebled *according to its price* at the time of harvest, *being then payable by agreement*; and so may wool and cotton: *but* grafs and the fibres of grafs, clarified butter, salt, and raw sugar, may be increased eight-fold in one year.

XLV.

NÁREDA :—Of interest on loans, this is *the universal and highest rule*; but the rate customary in the country where the debt was contracted may be different:

2. It may be double, or treble, or, in another country, quadruple; so, in another, even octuple: what is usual in the country, must be paid.

To reconcile the seeming contradictions of these texts, all commentators have established various applications of them consistent with their own apprehension *of the purport of the several texts*. The subject is very intricate; and the opinions of some authors shall therefore be separately stated, to explain the sense of the texts, and elucidate the rules established.

I. According to the *Mitácshará*:

Interest at the rate of an eightieth part and so forth, if it be receivable daily, is called *cáyicā*; the same, if receivable monthly, is named *cálicā*; this is declared by the commentator: and this interest, being received every month, is therefore *named cálicā*; the same interest divided by the number of days *in a month*, and receivable daily, is *cáyicā*: but *cāritā* signifies interest receivable

only at the time voluntarily stipulated by the borrower. *Chacra-vriddhi* is obvious.

On this interpretation, the texts of GÓTAMA and MENU regard interest named *cāritā*. An agreement for interest should not be made, *even* by the desire of the borrower, for a period exceeding one year. Interest therefore should be paid by the year, as the longest period *for which it ought to be forborne*; it *should not be made payable* at the end of thirteen months. Hence he has said, “by the day, by the month, or by the year.” Otherwise (unless it be paid by the year, which is the *period* mentioned) it would be difficult to obtain that interest *when long forborne*. In this case also, legal interest only should be taken. The Sage declares it: “nor any interest which is unapproved;” which is not propounded in codes of law; or (on the other reading) which is not seen in codes of law. We infer, that the four sorts of legal interest, and no other, should be taken.

If interest have been received for a few months, and subsequent interest have remained unpaid, by reason of the debtor's indigence, even to the tenth or twelfth year, the principal is only doubled. The creditor may take his principal and an equal sum as interest (XLIII).

“Received at once (XLIII);” another reading has *sacridābitā*, lent once. Money so lent can only be doubled; but recovered from one person, and lent to another, it may be more than doubled. On the first reading, *sacridābrītā*, received at once, the text should be thus expounded: “*interest on money*, received by degrees, day by day, month by month, or year by year, may more than double the principal.”

The *cāyicā*, or corporal interest, mentioned by VYĀSA, and interest by enjoyment and hair-interest, explained by VRĪHAS-PATI, are exclusive of these. Hair-interest occurs where money is borrowed on a promise in this form: “I will pay twenty shells every day, as interest, until the debt be discharged; *on these terms* lend me one silver coin” (XXXV 4). The *cāyicā* of VYĀSA (XXXIX) is the usufruct of a slave or the like, when no specific agreement is made that the use and profit of the pledge shall be the only interest. Interest by enjoyment is the use or occupation of a pledged house or the like; and is mentioned by CĀTYĀYANA (XXXVII 3) under the name of *ādhibhōga* or *use of a pledge*.

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These may be received entire, so long as the principal remain unpaid (XXXVI 6). Or the *cāyicā* of NÁREDA (XXXVI 2) and *śic'hāvṛiddhi* of VRĪHASPATI (XXXV 4 & 5), *that is, daily interest*, may certainly be received entire, under the authority of the law, so long as the principal remain unpaid: but not interest named *cālicā* and the rest; for no law *expressly authorizes it*. Compound interest is immoral; and so is the use or profit of a pledged house or slave or the like, after receiving twice the amount of the principal (XXXV 7). But, we think, neither hair-interest *received daily*, nor interest received monthly or annually, is illegal, *though* it have amounted to a sum exceeding the principal.

To this an objection is made: if interest which is payable daily cannot, through the indigence of the debtor, be recovered each day; still, whenever the debt shall be discharged, that interest must be paid with the whole arrears of the account, however great the sum may be. This should be affirmed; else the mention of hair-interest in the text (XXXV 7) is unmeaning. But there is a consequent inconsistency with general practice; for in some countries it is the practice, that hair-interest should be received to the *last* day of the stipulated period; *but, if the principal* happen to remain unliquidated after that period, such interest only as is settled by five persons, *acting as arbitrators*, is received from that date. In other countries, hair-interest is only received for a few days as determined by five persons *acting as arbitrators*; and beyond that time, such interest as is settled by them.

This *seeming contradiction* may be reconciled from the text of NÁREDA; “but the rate customary in the country, where the debt was contracted, may be different” (XLV 1). However, another objection is started: if stipulated interest can only be received at legal rates, it contradicts the texts of CĀTYÁYANA (XXXVII 1); for he describes stipulated interest as exceeding the allowed rate. It is answered, the prohibition against receiving any interest, which is unapproved, does not denote it *legally* irrecoverable, but immoral. If, therefore, a man require stipulated interest above the rate allowed by the law, he can recover it, but is guilty of a moral offence. This is evident from the text of VRĪHASPATI; “and the exaction of the principal and interest after a part of it has been liquidated is reprehensible”

fible" (XXXV 7). YÁJNYAWALCYA also declares, "all borrowers may pay whatever interest has been stipulated by them" (XXXII). On this exposition, the interest payable by those who travel through vast forests, as specified by YÁJNYAWALCYA (XXXII) is legal; for the text is cited with this observation, "the Sage declares an alternative in respect of interest varying according to the *class of the receiver*;" that is, the receiver of the loan. But, in fact, it is proper to consider this as descriptive of stipulated interest, for it has the same import with the text of MENU (XXXIII). However, such stipulated interest is legal, because it is authorized by an express law; but the text of VRĪHASPATI (XXXV 7) intends other borrowers than such as traverse the ocean and the like.

It should not be argued, that the text of MENU has a different purport, coinciding with part of the text of YÁJNYAWALCYA, "or whatever interest has been stipulated by them" (XXXII). That would be inconsistent with the interpretation of this text, "all borrowers, *Bráhmaṇas* as well as others, should pay, to lenders of all classes, whatever interest has been stipulated and promised by them." But if it be expounded, "all borrowers, whether trafficking by sea or not," then it may be made to coincide with the text of MENU.

Here it should be observed, that the author of the *Mitácsharā* supplies the reason for the rate of ten in the hundred and the like, payable by those who travel through vast forests and the rest, "because there is risk of losing even the principal lent." It is therefore indicated, that on loans secured by a pledge or the like, where no risk of losing the principal is incurred, the eightieth part only should be taken.

The text of YÁJNYAWALCYA on compound interest and the rest (XXXVIII i) is not approved in the *Mitácsharā*. According to the opinion delivered in that work, the receipt of interest named *cálicā* and the rest, even beyond the year, is not forbidden.

II. According to CHANDÉSWARA :

"Interest beyond the year" (XLI) signifies interest exceeding the year. If a money-lender, apprehending that the sum lent

lent would be repaid by the borrower in very few days, bargain for specific interest, it shall only be extended to the close of the year, not fixed for a period exceeding that *space of time*.

CHANDÉSWARA.

The meaning suggested by the gloss is this: a borrower asks a loan of a moneyed man; but he conjectures, from the borrower's purposes, that it will be early repaid: he therefore says, "if you will undertake to pay interest for six months, I will lend the money;" and the borrower, agreeing to this condition, accepts the loan. In such a case as this, a lender may require a stipulated period of six months, ten months, or one year; but not a greater time.

In like manner, some person, whose capital is small, practises money-lending, because he is unable to provide for his wants by other modes—A man, needing a loan, said to him, "Lend me money:" the money-lender rejoined, "When wilt thou repay it?" The borrower told him, "My brother is gone to the royal residence; when he returns, two or three months hence, I will repay you." The money-lender considered, "he will repay it early, and my gain will be small; why should I trust my property in the hands of another for so small a gain? If he will promise to pay interest during a long period, then only should the money be lent." Accordingly he told the borrower, "if thou wilt pay interest during a longer period, I will advance the loan." The borrower acquiescing in this proposal, the lender added, "if thou shouldst repay the loan within the year, at the end of six or seven months, or at any time before the close of the year, I must receive the amount of interest for a whole year." So saying, he advanced the loan; and the borrower, agreeing to those terms, contracted the debt: and interest computed for a whole year was paid, whether he discharged the debt within the year or at the close of the year. In such a case as this, a lender should not require a stipulation for interest one day beyond the year. But if the borrower cannot discharge the debt even at the expiration of the year, then indeed legal interest may be received beyond the year.

"Nor any interest which is unapproved:" let no lender receive compound interest, nor interest for stated times, nor stipulated interest, nor corporal interest, in modes, or at rates, unauthorized

authorized by the law. Consequently he should only receive periodical interest, and the rest, in legal modes ; that is, at the rate of an eightieth part of the principal, and so forth.

Does not *cāritā* signify interest specially and freely promised by the debtor ? How then is it regulated by legal rates ? *It is regulated* by the texts of MENU (XXXIII) and HÁRITA (XXXIV and XLIV).

The text of MENU is thus expounded : “ men well acquainted with sea voyages ” are mentioned merely as an instance suggesting a trader in general. “ With times and with places ; ” who see that so much is the profit on such articles at such a place. That interest which such traders settle when borrowing money, has legal force, and should be adjudged.

The first text of HÁRITA (XXXIV) is applied by CHANDÉSWARA to borrowers of a mixed class. “ Grain may be doubled at the time of harvest ” (XLIV 2) ; grain is doubled at the time when new grain is gathered, even two or three months after the loan. If it be not then paid, it can only be trebled, and bears no further interest. “ And so may wool and cotton ; ” wool, that is, the hair of sheep and the like, and cotton also, bear the same interest as grain. “ But the fibres of grass, &c.” on the fibres of the *vīraṇa* and the like, and on grass and the like, the interest is eightfold for one year. Such is the gloss on the text of HÁRITA ; and the meaning is, that this text does not concern the limits of interest.

Is not this unreasonable ? Grain must be repaid two-fold at the time of harvest ; that is, when new grain is gathered. If grain, therefore, be borrowed in the month of *Aśhādha*, *Jyāishthī*, or the like, it must be repaid two-fold in *Bhādra* or *Pauṣha*. It is, consequently, a great disparity, that the same interest should be received in seven or eight months, which would be due in fifty months *at the prescribed rate of two in the hundred*. Aware of this question, CHANDÉSWARA cites the text of NÁREDA (XLV), and thus expounds it : “ this rate of interest, an eightieth part of the principal, and so forth, is universal, because it is authorized by the law.” In some countries, corn is repaid with an advance of a quarter ; in others, with an advance of half *the quantity lent* : these rates are also comprehended in *the text* (XLV 2) ; for twice, and three times as much, and so forth,

forth, are mere examples. Consequently on salt, clarified butter, and the rest, interest should be taken at the rate settled by the immemorial custom of the country.

But interest at ten or twenty in the hundred, payable by those who travel through vast forests, or traverse the ocean, is not stipulated interest (*cāritā*); for CHANDÉSWARA says, payment of it may be enforced, whether it have been stipulated or not. In fact, so much interest as is specially promised by the debtor, is stipulated interest, not confined to the rate of an eightieth, and so forth. That stipulated interest also is allowed by the law, for YAJNYAWALKYA declares, "borrowers may pay whatever interest has been stipulated by them" (XXXIII); and CĀTYĀYANA says, "stipulated interest is that which has been specially promised by the debtor" (XXXVII): This interest is legal, if it were promised in a time of extreme distress; but, promised by compulsion, without such distress, it is not legal—for CĀTYĀYANA adds, "and in no other case whatever must stipulated interest be paid." Even though stipulated in a time of extreme distress, *on a loan renewed*, it is not legal, if payment could have been obtained; for VRĪHASPATI declares, "the exaction of the principal and interest, after a part of it has been liquidated, is usury, and reprehensible" (XXXIV 7).

Cāyicā is of two sorts; *one* arising from the body of a *pledged* female animal to be milked, or a male animal to work or carry burdens, as described by VYĀSA (XXXIX); *the other* explained by NĀREDA, interest repeatedly paid without diminishing the principal (XXXVI). The use and profit of a cow or the like to be milked, or of a boat or the like, where no such agreement has been *expressly* made, as described by CĀTYĀYANA (XXXVII 3) is the *cāyicā* of VYĀSA; and it should be taken at the rate of an eightieth part *by the month*, under the restriction of the text, "nor any interest which is unapproved" (XLI).

CHANDÉSWARA says, a cow or the like to be milked, or an ox or the like to work or carry burdens, are instances mentioned generally; for the use of boats or the like, not expressly pledged, must otherwise be excluded *from that definition of* *cāyicā*. When there is such an express agreement as described by CĀTYĀYANA, the use of the pledge is *ādhibhōga*, the same with *bhōgalābha*,

galábha, propounded by VRĪHASPATI. In this case no reference is made to the rate of an eightieth part, for no text specially directs it: the whole use and profit of the pledge *shall be the interest*; for such is the import of the text. These two kinds of interest are consequently distinct, but should be admitted as has been stated.

The *cāyicā* of NÁREDA is thus explained: "interest to be repeatedly paid without diminishing the body (*cāyá*) of the principal sum, at the rate of a *pana*, or half or other fraction of a *pana*, as agreed by both parties, is named *cāyicā* according to NÁREDA." CHANDÉSWARA.

For instance; a borrower, coming to a moneyed man, asks a loan; in reply, he asks, "when wilt thou repay it?" the borrower rejoins, "I will repay it at the end of a month:" a loan is accordingly concluded to mutual satisfaction. Afterwards, at the close of the month, the creditor demands payment; but the debtor, unable to discharge the debt, answers evasively, "I will pay you at the end of a fortnight:" the creditor repeatedly urges payment; and the debtor, in order to satisfy him, promises some additional interest, such as a *pana* (*or the like*). That additional interest, which he thus promises from time to time, being repeatedly settled between the parties day after day, is the *cāyicā* of NÁREDA; it is not the stipulated interest named *cāritā*, for that commences from the date of the loan. On this account it is separately mentioned by NÁREDA.

"Without diminishing the principal;" in the case of interest payable at stated times (*cālicā*) and the like, if more than an eightieth part or the like have been paid for interest, whatever appears, on computing the account at the time of discharging the debt, to have been overpaid, by so much is the principal, which was receivable by the creditor, diminished. But, in this case, what he receives from time to time, above the rate of an eightieth part, does not reduce the principal sum. It is not proper to say, that the interest should only be received at legal rates, because this (*cāyicā*) is in its own nature a breach of the law. Were it so, *still* the text, prohibiting any interest which is unapproved (XLI), concerns only the *cāyicā* of VYÁSA, not this (*cāyicā*): this form of interest is only mentioned by CHANDÉSWARA incidentally. The word (*śasvat*) "repeatedly" signifies

signifies again and again ; for it is so explained by AMERA. (Chapter XVII, on Indeclinable Words.)

That interest which is received month after month, at the rate of an eightieth part of *the principal*, is considered as *cálicā*. Here month is a mere instance : that interest, therefore, which is received by the year, is also considered as *cálicā* ; and so is that which is payable at the end of six months, or the like. Accordingly MENU, in the text cited (XLI), mentions interest for time generally.

“ Interest upon interest :” when a debtor, unable to pay the whole amount of interest, promises to pay it with interest ; the interest, which is so promised, is wheel-interest.

CHANDÉSWARA. More will be said on this subject in the section on Recovery of Debts : but even interest upon interest a man should only take at the legal rate of an eightieth part and so forth.

When the borrower, at the time of receiving the loan, makes an agreement in this form, “ I will pay twenty shells a day,” and the loan is made on those terms ; in that case, such interest is hair-interest, as described by VRĪHASPATI (XXXV 4). Interest by enjoyment (*bhōgalābha*) has been already explained in the gloss on *cāyicā*.

Cāyicā, hair-interest, and interest by enjoyment, shall be paid *entire*, so long as the principal remain unpaid. If the payment of interest have been discontinued a few days after *the loan*, and the debtor be only able to pay the debt ten or fifteen years afterwards, twice the amount of the principal only shall, *in general*, be received by the creditor, in lieu of other interest (XLIII) : but it is not so in the present case. On the contrary, hair-interest shall be received on a calculation of the daily amount *forborne*. *Cāyicā*, or interest accruing from a pledged body, shall be received on a computation of an eightieth part of the principal monthly, until the principal be liquidated : if the thing to be used be destroyed by the act of GOD, another chattel must be delivered in its stead ; or, if that cannot be, interest must be made good otherwise. Interest by enjoyment continues so long as the thing *pledged* remains with him who has the use and profit of it : if the pledge be destroyed by the act of GOD, the debtor shall be compelled to deliver another pledge, under the authority of a

text

text which will be quoted in the chapter on Pledges. The creditor should receive a fresh pledge; or, if that cannot be, the price of the usufruct *forborne* should be paid when the principal is liquidated. These rules are grounded on a text of VRĪHASPATI (XXXV 6), and on one of YÁJNYAWALCYA (XXXVIII 2).

What sort of interest is suggested by the texts, "let no lender receive interest beyond the year," (XL and XLI)? It is said, "such interest is a species of stipulated interest (*cáritā*)." Here it should be noticed, that the legal amount of interest, whether received at the time when the debt is discharged, or earlier, or both (*partly at one time, and partly at another*), only equals the principal sum. If stipulated interest, *cāyicā*, hair-interest, or interest by enjoyment, when added to the principal, more than double it, they are not legal *in a moral view*. By receiving such interest, *Brāhmanas* and others, and even *Vaisyas*, commit a sin; but if a creditor insist on obtaining it, the king shall enforce payment: VRĪHASPATI declares as much (XXXV 7). The use and profit of a pledge, or the use of a chattel in that form of interest which is named *cāyicā*, after twice the amount of the principal has been obtained from the usufruct; interest upon interest; and, the exaction of principal and interest, that is, of the principal with the whole interest, after a small part or the whole of the interest has been received, either as stipulated or monthly interest, is usury reprehensible in a man who subsists by money-lending. The meaning of the text is, that such usury produces the consequence of sin; not that the king shall not enforce payment of it.

"Stipulated interest beyond the legal rate, &c." (XLII); *this text of MENU is otherwise* expounded by CHANDÉSWARA: "interest exceeding the rate stipulated *by the debtor*, and different from the rates prescribed by the law, is invalid: for Sages have declared the *legal* way of money-lending." The *legal* way of money-lending is founded on this: interest allowed by the law, or stipulated by the debtor, is valid, not any other interest. But if the lender, through covetousness, require greater interest, and the borrower, apprehensive of not finding any other lender, be willing to pay *higher interest*, in that case the rule is this; "the lender is entitled *at most* to five in the hundred" (XLII). "From

a *Brāhmaṇa*” should be supplied ; for the rule would be superfluous if it were referred to a *Sūdra*. The author of the *Mitācsharā* seems to have entertained the same opinion ; for he has not particularly remarked *on the text*. On this interpretation also, the payment of hair-interest and *cāyicā*, so long as the principal remain unpaid, is conformable to the text of NĀREDA (XLV). CHANDÉSWARA’S opinion may be thus briefly stated.

III. According to VĀCHESPATI MISRA :

On his explanation, *cāyicā* and the rest also vary from the legal rate of an eightieth part *by the month* ; for he cites the texts of VRĪHASPATI in reply to the question, What other kinds of interest are there ? and how many sorts *of interest* ? If interest at the eightieth part *of the principal*, as already mentioned by MISRA, were distributed by VRĪHASPATI into monthly and annual interest, and so forth, the citation introduced by the question, “ what other kinds of interest are there ? ” would be irrelevant.

When this question is put, “ What other kinds of interest are there ? ” the answer is, hair-interest, and interest by enjoyment. “ How many sorts ? ” the answer is, legal interest, as *cālicā* and the rest ; and interest not prescribed by the law, as *cāritā* and the rest. But the exposition would be imperfect, since the receipt even of legal interest, as *cālicā* and the rest, beyond the year, is forbidden ; and the omission of highest *limited* interest would be derogatory *to the Sage*.

Subdividing into four sorts interest at the rate of an eightieth, and so forth, as in the exposition of CHANDÉSWARA ; and adding them to other kinds of interest, namely hair-interest, and interest by enjoyment ; *there result the kinds of interest* specified by VRĪHASPATI. Thus hair-interest, and interest by enjoyment, are stated in answer to the question, what other kinds of interest are there ? And *cāyicā*, and other subdivisions *of the general rate*, are stated in answer to the question, how many sorts there are ? This again is erroneous ; for, had such been the meaning, the question, how many sorts ? should have been first put. To expatiate would be vain.

On

On this interpretation, the *cāyicā* of VYĀSA, arising from the profit of a slave's labour or the like, falls under the description of interest by enjoyment; but the *cāyicā* of NĀREDA must be considered as one of the subdivisions of the general rate. For MISRA says, the *cāyicā* of VYĀSA falls under the description of interest by enjoyment; but the *cāyicā* of NĀREDA is distinct from these: and the *cāyicā* of VYĀSA is not mentioned in the following exposition: "*cāyicā* is interest by the year; *cālicā*, by the month; *chacravṛddhi*, interest upon interest; *cāritā*, interest specially promised in a time of extreme distress; *'sic'hāvṛddhi*, interest payable daily; *bhōgalābha*, the use and profit of a slave's labour, and the like."

The use of distinguishing the *cāyicā* of VYĀSA from interest by enjoyment, will be hereafter explained. But the *cāyicā* of NĀREDA is interest payable by the year, considering the word *śaśwat*, repeatedly, as signifying annually. This is paid without diminishing the principal; even though received for a thousand years, it does not reduce the principal. If the interest happen to be forborne after the first few days, the whole arrears of interest must be paid when the debt is discharged; for, according to MISRA's opinion, this kind of interest is intended by the word *cāyicā* in the text of VRĪHASPATI (XXXV 6): and this has been stated by MISRA, on the authority of HELĀYUDHA.

But if the expression of MISRA, "to be paid by the day," be authentick, the meaning must be, that the sum calculated on daily interest shall be paid yearly. Else it is inconsistent with his exposition, "*cāyicā* is interest by the year." The special rule adopted by him, that *cāyicā* and the rest must be received at the rate of an eightieth part, is not suggested by the law; but hair-interest, which is receivable daily, is founded on a text of VRĪHASPATI (XXXV 4).

"*Adhibhōga*, or a loan on the use of a pledge" (XXXVII 3); where an agreement is made, that the whole use of the thing shall be the only interest, it constitutes a loan on the use of a pledge. MISRA.

It is, consequently, intimated, that the word "pledge," in the first part of the text, is indeterminate; for by such an exposition *cāyicā* is of two sorts, one of which corresponds with *adhibhōga*. It follows, that the various sorts of interest are seven.

Of

Of these the *cāyicā* of VYĀSA, *cālicā*, stipulated interest, and interest upon interest, should not be received beyond the year. For the sake of this distinction, VYĀSA has stated *cāyicā* separately from *ādhibhōga*, to which it is otherwise similar. *Cāyicā* is the use and profit of the bodies of quadrupeds, as oxen, horses, and the like. Or the repetition of the word "pledge," in the text of CĀTYĀYANA, has a determinate use; consequently, it should be understood, as in the gloss of CHANDESWARA, that *ādhibhōga* takes place when there is an agreement in regard to the pledge; otherwise the usufruct is *cāyicā*.

Such interest may be taken even beyond the year, on a fresh agreement. The authority for this is the text of GŌTAMA (XL): and the sense of the text is this; of the sorts of interest enumerated, interest upon interest, and the rest, no lender should take the fourth sort beyond the year; nor any interest which is not again declared or promised, beyond the year; that is, neither of the other three *without a fresh agreement*. The rule respecting the *cāyicā* of NĀREDA has been already delivered. It is the same in respect of the other two; at the time of discharging the debt, they should be received in their own kind, or by their value.

A debt secured *merely* by a written contract (XXXVIII 2) shall be discharged by three persons, the debtor, his son, and his son's son; but in the case of a loan on the use of a pledge, the debt must be discharged even by a great grandson. Yet if the agreement were in this form, "I will relinquish the pledge when twice the amount of the principal has been realized," in that case the creditor must relinquish the pledge whenever he has realized double the amount of the principal.

XLVI.

YĀJNYAWALKYA:—But when a pledge has been given, *which the creditor promised to return on the debt being doubled*, then surely, the interest having equalled the principal, the pledge must be released on the double sum being paid, or having been received from the use of the pledge.

XLVII.

VISHNU:—Even if the highest interest, *or that equal to the principal sum*, have accrued, the creditor shall not *be forced to* restore a pledge fixed in his hands unless there have been a special agreement.

This distinction is also noticed by CHANDÉSWARA, and should be admitted by others. But that is not the import of the text, “a pledge shall be enjoyed until actual payment of the debt” (XXXVIII 2). The text of VRĪHASPATI (XXXV 7) has been explained. His former text on interest by enjoyment (XXXV 5) furnishes an instance only of such interest; for it coincides with the text of CĀTYĀYANA (XXXVII 3). It is thus expounded by MISRA: “Rent” signifies hire, use, or occupation of a pledged house: “Produce” (*śadas*) signifies grain or other fruit of a pledged field, agreeably to the sense of the verb *sad*, cut down or reap.

Here boats and the like are also suggested by the word “house,” taken as a general instance: and “rent,” or use, also suggests transport of merchandize, and the like.

In a gloss on the text of MENU (XLIII), MISRA thus expounds it: “If gems, *money*, or the like, be received at once, double the amount of the principal only should be taken; but if they be not received at once, more may be taken.” Consequently here, as before, if interest have anyhow remained unpaid after the first few days, the principal is only doubled, however long the period of forbearance may be, and no more *should be received*.

The text, allowing a *pana* each month for a *purāna* (XXXIV), and that which confirms interest settled by men well acquainted with sea-voyages (XXXIII), concern stipulated interest only. But these rules subsist where the price is great at the time when the debt is contracted, or where the value of a thing bought with money borrowed for the purposes of trade, and sold in another country, is improved. The text of HĀRĪTA (XLIV 2) declares

declares legal interest on particular articles. It is proper to consider the text of YÁJNYAWALCYA (XXXII) as solely relating to such interest. This and other inferences may be drawn from reasoning.

In this exposition BHAVADÉVA concurs ; but HELÁYUDHA reads the text of NÁREDA (XXXVI 2), *panavāhyā* instead of *panārdhādyā*, and explains the text, “interest to be borne (*vāhaniyā*) or received by the creditor, repeatedly, even for a thousand years, if the (*pana*) principal sum remain *due*, without any diminution of (*cāyā*) the principal, is called *cāyicā*.” On this general consideration it is said by MISRA, that *cāyicā* must be paid so long as the principal remain unliquidated. But CHANDESWARA rejects this reading, because it has been unnoticed by most authors.

“Let no lender receive interest beyond the year” (XL) and XLI): if a creditor is desirous of receiving interest in such a manner that interest may not cease on *its equalling* the debt, he should receive his interest before the close of the year, not after the year has expired. The meaning, therefore, on this interpretation is, that he should receive the interest then only when the debt is discharged, or the highest limited interest due for the time *the loan has remained unpaid*. But if the creditor, through want of confidence in his debtor, or from his own inability to provide for his wants *otherwise*, wishes to receive interest within the year, in that case he may receive it before the close of the year ; that is, he may receive the interest for twelve months, month by month. But after a year, the debt is only doubled by remaining undischarged during fifty months ; before the expiration of that period, interest is payable on the terms of the loan. Consequently, *cāyicā*, if it can be recovered, may be taken beyond the year, when there is a promise in this form, “I will pay it *regularly* until the debt be discharged ;” and so may *cālicā*, if there be a promise of paying it month by month. But if the creditor cannot obtain regular payment, the principal is doubled in *due time*.

Cāritā is described by CĀTYÁYANA (XXXVII 1), and noticed by MENU (XXXIII). By the rule, “nor any interest which is unapproved” (XLI), *it is directed* to take even *cāyicā*, and the rest, only at the rate of an eightieth part, and so forth.

But if there be an agreement in this form, " I will pay it daily," it is hair-interest. Other interest must be regulated in the mode above mentioned.

IV. According to 'SÚLAPÁNI in the *Dípacalicá*.

On the text of YÁJNYAWALCYA (XXXVIII 1) it is remarked in his work, " this verse is not found in some copies." Interest is of six sorts under the text of VRĪHASPATI (XXXV 2). There *cáyicá* is interest which arises from the labour or use of an animal to carry burdens, or of a female quadruped to be milked; *cálicá* is interest which is payable by the month; interest upon interest is *chacravṛiddhi*; interest *especially and freely* promised by the debtor himself is *cáritá*; that which is received daily is *'sic'hávriddhi*; and the profit arising from the use of a pledge is *bhoga*. Among these, *'sic'hávriddhi*, *cáyicá*, and interest by enjoyment, may be received until the principal be discharged (XXXV 6).

This notion is intimated: according to YÁJNYAWALCYA, interest by enjoyment is comprehended under corporal interest (*cáyicá*); and the *cáyicá* of NÁREDA, as expounded by CHANDÉSWARA, falls under the description of stipulated interest (*cáritá*): as expounded by MISRA, it falls under the description of interest payable at a time certain (*cálicá*); for the word " month " is a mere instance of a general sense. *'Sic'hávriddhi* is only a distinct form of stipulated interest; but so long as the principal remain unliquidated, this interest must be paid to fulfil the terms of the agreement. But if there be no promise of paying it daily so long as the principal remain undischarged, it is not hair-interest. If an agreement that interest at the rate of four *panas*, or the like, shall be paid every fifth day so long as the principal remain undischarged, that also should, it seems, be paid until the principal be liquidated; but such a contract ought not to be made, because it is not authorized by the law.

The text of MENU (XLI) must be explained as in the gloss of HELÁYUDHA; but other texts must be understood in the mode already stated. In the text of YÁJNYAWALCYA (XXXII), greater interest is allowed on account of the risk of losing the principal: it is therefore legal in this *author's* opinion. With this exception, the text of VRĪHASPATI (XXXV 7) is applicable

cable to all cases. The Sage declares an alternative in regard to the prescribed rates of two and three in the hundred, and the like, "or whatever interest has been stipulated by them" (XXXII). This consequently intends stipulated interest and the like; and the text, beginning with the words "interest upon interest" (XXXVIII 1), only recapitulates those sorts of interest.

V. According to CULLÚCABHATTA:

"Let no lender receive interest beyond the year" (XLI): if a creditor, having contracted for interest payable at stated times (*cálicá*), or the like, but finding it troublesome to receive interest monthly, tell the debtor, "thou shalt pay the interest of several months at once;" still he should receive it within the year. For example: interest for six months, for ten months, or for one year, may be paid at once; not interest for thirteen, fourteen, or fifteen months. The meaning is this: if he do not receive interest before the close of the year, in that case, since its periodical payments are interrupted, and it can *now* only be received when the debt is discharged, interest can on no account be more than sufficient to double the debt, as is declared by MENU (XLIII). It is implied, that interest receivable day by day, month by month, or the like, may be taken to a greater amount than is sufficient to double the debt, provided the principal remained unpaid. Such is the gloss of CULLÚCABHATTA.

Here interest receivable day by day is the *cáyicá* of NÁREDA; for the word *śaśwat*, "repeatedly," in that text (XXXVI), bears the sense of "daily." The same interest is described by VRĪHASPATI, under the name of hair-interest (XXXV 4). Not considering the *cáyicá* of VYÁSA and profit by enjoyment of a pledge (*bhōgalābha*) as interest, it is stated that the various sorts of interest are four. But if these be acknowledged to be sorts of interest, there are five or six kinds.

In the text of MENU (XLI) the reading is *adrīṣṭam*, unseen: let no lender receive any interest unseen in codes of law, or unknown to the law. This prohibition is intended to show the immorality of receiving such interest, not to ordain that a lender shall not obtain it, if he wish to receive such interest. Consequently, stipulated interest, and the like, which have been previously

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viously settled, only produce a taint of sin in the lender who receives them, not an incapacity to recover them. What are those *usurious* forms of interest? *In answer to this question*, the Sage adds, "interest upon interest, &c." VRĪHASPATI propounds their nature *in a text above cited* (XXXV 3).

Interest upon interest is, in its own nature, reprehensible; interest for a time certain, when more interest is *received* than is sufficient to double the principal; corporal interest (*cāyicā*), when the animal is too much worked or milked; stipulated interest, even though it have been settled by the debtor in a time of extreme distress, and by the creditor through kindness. These four illegal sorts of interest should not be received: VRĪHASPATI expressly forbids it (XXXV 7).

CULLÚCABHATTA.

Here the *cāyicā* of NĀREDA must also be comprehended under the term *cāyicā*. Hence the receipt of that also is shown immoral. How is it immoral, if the debt be discharged within the fourth or fifth month; for, in that case, more interest than is sufficient to double the principal is not received? *This objection is not well founded*; for those kinds of interest are reprehensible, from their intrinsic evil. On this opinion also, a creditor, who advanced a loan, should only receive twice the amount of the principal, after the time when the principal is duly doubled, and not at any time before that period. But if the debt be discharged before the time when it would regularly be doubled, in that case the principal, with *legal* interest only, should be then received. Thus *Brāhmanas* and the rest violate no duty. Within that period, whatever interest is received at any stated times, is *cāyicā*; for the word "month" is *merely* an instance *stated generally* in the texts of NĀREDA and others (XXXVI 2). Accordingly MENU mentions periodical interest generally (XLI).

The text *subsequently cited* (XLII) is applicable to the case of interest due without a special agreement. That will be explained under its proper head. The text, "whatever interest shall be settled by men well acquainted with sea voyages, &c." (XXXIII), is expounded as above stated.

How can it be said that stipulated interest (*cāritā*) is unauthorized by the law, since *cāritā* is described in the code of CATY-

ĀYANA,

ĀYANA, "interest which has been specially *and freely* promised by the debtor in a time of extreme distress" (XXXVII)? Nor should it be argued, that it is unauthorized by the law, not being suggested in the *Vēda*. The text of CĀTYĀYANA may also be considered as *a portion of the Vēda*: else the highest *limited* interest, such as interest doubling the debt and the like, would also be unauthorized by the law. To this it is answered, the law expresses generally, that a *Vaisya* and others may subsist by money-lending: in answer to the question, how much profit ought to be taken *by a money-lender*? the texts of MENU and the rest are adduced, or the scriptural law to be established through them: a lender may receive, on a loan, the eightieth part *of the principal and so forth*, in the order of classes, as prescribed; or he may take, as the highest interest, if the debt have been long outstanding, a sum equal to the principal, for the interest accumulated at such rates: this, and other *legal interest*, *a lender may receive*. Interest so authorized is alone received in practice as legal interest. It is the rule for delivery *by the creditor*; for it is taught by the law, which suggests a mode of subsistence by the delivery of loans. But if a borrower stipulate greater interest through the urgency of his wants, then, in answer to the question, what should be done at the time of payment? a rule may be deduced from the text of CĀTYĀYANA (XXXVII 1), the debtor must pay the interest which he has promised. Such interest, although it be so authorized, is not prescribed to the lender by codes of law: hence the delivery of interest, which has been promised *by the debtor*, is a rule for receipt*, a *subordinate* title of judicial procedure under the head of Loans delivered. But, in fact, interest allowed by the law is legal interest; and interest settled by the will of men is not received in practice as legal interest; for the meaning of "legal" is, "allowed by the law." Hence, where a creditor, from the circumstances of the times or the like, accepts of less than legal interest, since less interest must in that case be admitted, there is no objection to the law of stipulated interest, as it concerns the lender *as well as the borrower*. Such is CULLÚCABHATTA's opinion.

VI. According to other Commentators:

But others consider the text of YĀJNYAWALCYA (XXXII)

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* See the gloss on the text of NĀREDA (I).

as intended to authorize the receipt of ten or twenty in the hundred from those who travel through forests or traverse the ocean, although *specifick* interest have not been stipulated; but, if *specifick* interest have been stipulated, *it is stated as* another case; “or whatever interest has been stipulated by them:” and in this are included the rates of nine and eleven in the hundred, and the like. The text of MENU (XXXIII) has the same import; but the expression, “all *borrowers*,” suggests *not only* those who travel through forests, or traverse the ocean, *but* any others of the four classes. However, the acceptance of interest above the prescribed rates, from such as travel through vast forests and the rest, is immoral; for there are no grounds of restriction to the text of VRĪHASPATI (XXXV 7).

Here it should be observed, that large gains are the grounds on which greater interest is paid by those who traverse the ocean; as intimated by the text of MENU, “whatever interest shall be settled by men well acquainted with times and with places.” The grounds are the same in other circumstances of the same case, intended by the text of YÁJNYAWALCYA (XXXII); not the risk of losing the principal. Thus the rate of interest is the same, even though the debt be secured by a pledge.

Does not the text of MENU (XXXIII) consequently become unmeaning, since CÁTYÁYANA authorizes the payment of stipulated interest by debtors of all descriptions (XXXVII 2)? No; for CÁTYÁYANA declares, that interest, which has been promised, through compulsion, by others than seafaring traders and the rest, shall not be paid; “and in no other case whatever must stipulated interest be paid” (XXXVII 2). But a special rule is delivered (XXXIII), to legalize interest promised, through compulsion, by seafaring traders and the rest. This text, however, is considered by CHANDESWARA as intending traders in general; and both texts are referred by him to the head of stipulated interest (*cáritá*). But interest promised by others than traders, in a time of distress, is called *cáritá*, and must be paid by the debtor; but promised through compulsion, without *any necessity arising from* a season of distress, it need not be paid (XXXVII 2). This is a general instance: sometimes, from the circumstances of the times, even less than legal interest, accepted by the lender, is consistent with usage, and falls under the

the description of stipulated interest. By accepting it, the lender commits no sin ; but by parity of reasoning, a sin is committed by the debtor*.

If stipulated interest above the rate of an eightieth part may be paid by the free consent of the debtor, what is the purport of the text of MENU (XLI)? Some explain it, "let no lender receive interest on money which has not been lent more than a year." Consequently this belongs to the case of interest without a special agreement ; so VISHNU ordains, "after the lapse of one year, debtors must pay interest, as allowed, even though not agreed on *at the time of the loan*†." For example : the debtor, having occasion to incur expense for the nuptials of his son or the like, thus addressed the lender, "advance me this loan without interest ; after completing the rites intended, I will repay it, making up the sum by the sale of effects, or by alms any where obtained:" the borrower thus contracted the debt : if it be demanded, but not paid, while he remains in the country, it bears no interest for one year ; but after that period it bears interest. Such is the purport *of the text*. Then what interest should debtors pay ? The Sage propounds it, "interest as allowed ;" as declared by the law concerning creditors, at the rate of an eightieth part and so forth, in the order of the *several* classes, *Bráhmaṇas* and the rest. This interpretation of the text of VISHNU is approved by CHANDESWARA. The distinction respecting such, as *fraudulently* go to another country, will be mentioned (Section III).

By the negative in the expression, "let no lender receive, &c." is it signified that he cannot receive it ; or joined to the imperative, does it signify, that duty is not fulfilled, and *consequently* that the receipt is immoral ? Since no other law intimates the receipt *of such interest* within the year, there is no contradiction : and as there is no law to remove the doubt, how soon a loan, which has been advanced without interest, shall bear interest, it is signified that interest shall not be received within the year. Thus, if a creditor, who had delivered a loan without interest, ask interest from the date of the loan when payment is tendered
after

* Since the lender sins by exacting more than legal interest, the Commentator thinks a borrower sins by taking advantage of the times to pay less than legal interest.

† Cited in its proper place in Section III. (V. 52.)

after the lapse of the year, then payment of interest for the period exceeding one year shall be enforced by the king: and in this case, the year consists of three hundred and sixty days, counted by *sāvāna* time; as deduced from the texts already quoted from the *Malamāsatatwa* (Section I, gloss on text XXV).

“He may take interest, which is unapproved” (XLI); which is not prescribed to lenders by the law, such as interest upon interest, and the rest; but not any other interest except interest upon interest, and the rest: this is an explanatory precept. However, the receipt of interest upon interest, and the rest, is immoral, as declared by the text of VRĪHASPATI (XXXV 7).

Is it not impossible there should be interest different both from interest upon interest, and the rest, and from interest at the rate of an eightieth part, and so forth: how can an explanatory precept have been delivered forbidding other sorts? If a man have contracted a debt at the time of harvest for the support of his family, and have hoarded a large quantity of grain; and the price happening to be greatly enhanced, should the creditor at the time of repayment say, “the price of grain which was purchased by thee with my money was doubled in five months, pay me therefore double the principal besides interest thereon:” this explanatory precept is intended to prevent such a transaction. It is accordingly usual in some districts, for lenders, who desire greater profit, to require from the borrower a stipulation for the current price in the month of *Aśbhād'ha*.

If such be the meaning, what is the scope of the text of MENU above cited (XLII)? It is a rule for interest on a debt contracted without *an agreement for interest*; for if a debt so contracted remain long unpaid, it bears interest. This will be particularly discussed in another place (Section III). The text is an answer to the question, whether interest shall in this case be taken at the rates prescribed by the law, or in the form of stipulated interest (*cāritā*) and the like: interest beyond the rates prescribed by the law, which suggests the mode of subsistence by money-lending, is invalid. Though asked by the lender, it shall not be obtained. A reason is given: because the wise have declared those rates, as fixed by the law, the *proper* way of lending: hence a creditor of the servile class is entitled *at most* to five in the hundred.

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If the rate fixed by the law be the only *proper* way of lending, is not *other* interest, even though promised by the debtor in a time of extreme distress, invalid? Therefore does the Sage add, "different." Here again fixed rates must be brought forward; "different from the rates fixed by mutual consent of lender and borrower." Interest different from that, and exceeding the legal rates, is invalid. Such is the sense of the text (XLII). After how many days does a debt, which remains unpaid, bear interest? It is answered: "let no lender receive interest arising from a debt which has not exceeded one year." Or the negative may be understood in the phrase, "take interest which is unapproved;" and the sense is, "let no lender receive interest unauthorized by the law." What is that *interest*? To this question the legislator replies, "interest upon interest, &c." and the negative here denotes *the immorality of such conduct*. Consequently, should a creditor be desirous of receiving interest unauthorized by the law, such as interest upon interest, and the like, he can receive it, but he commits a moral offence. Accordingly VRĪHASPATI declares it reprehensible (XXXV 7). This interpretation is consistent with the opinion of CULLŪCABHATTA, and should be admitted. Ultimately there is no difference.

It should not be objected, that whatever interpretation has been delivered by ancient authors, that only should be admitted; because an opinion not matured cannot be well adopted. There is no proof to support their interpretation. Nor should it be said, this text is *sufficient* authority. It is evident, that the text admits of another interpretation: and it must remain a doubt what interpretation should be established, since their comments are discordant. Nor should it be objected, what proof is there to support the interpretation proposed? It is a *sufficient* argument that the text may coincide with the rule of VISHNU (LII); for it is a maxim *in logick*, that propositions ought not to be separated in sense, when their coincidence is possible. Nor should it be affirmed, that VISHNU's rule may be otherwise explained. It is a maxim, that an obvious meaning is to be preferred to a forced construction: it would therefore, say these lawyers, be irregular to explain it otherwise.

On this *exposition of the law*, *cāyicā* is of two sorts; the *cāyicā* of

of VYÁSA, and the *cāyicā* of NÁREDA. *The first*, noticed by VYÁSA, by VRĪHASPATI, and by YÁJNYAWALCYA *also* according to the *Dípacalicā*, is in the nature of a usufruct; but distinguished from interest by enjoyment, in the manner already stated: the use of a pledge is interest by enjoyment (XXXVII 3); the benefit arising from the labour of a slave or the like, not pledged, is (*cāyicā*) corporal interest. When the agreement runs in this form, “this cow shall be milked by you one day in each month, and that shall be the only interest on the debt,” such interest is named *cāyicā*. Since there is no contract of hypothecation, it is not the use of a pledge. The owner may pledge the same cow to another creditor; and he may pay the interest otherwise: and another chattel may be required as a pledge for the same debt, to give confidence to the lender.

Again; a debtor may himself work two or three days *for the benefit of his creditor*. In that case also, *the benefit of his labour* is the interest named *cāyicā*. Here the word (*cāyā*) “body” is indeterminate: and the use of a boat or the like, for *the transport of goods*, in lieu of interest, is also *cāyicā*; and that must be allowed so long as the principal remain unpaid (XXXV 6).

When the benefit arising from *the labour of a slave* has been settled as *cāyicā* interest; and that slave, through indolence or inability, performs no labour, but pays money equal to the value of his labour, should that money be received as interest or not? and if it be received, under what description of interest does it fall? It is answered, the money is merely an equivalent for his labour; it should be received and considered as *cāyicā* interest.

If a moneyed man tell some merchant, “receive a hundred *suvernas* from me, and trade with them; whatever be the profit, one half the residue, after paying me interest, must be delivered to me, and thou shalt take the other half for thyself: but, if the capital happen to be lost, the loss shall be solely thine, and I shall recover the whole principal from thee.” On these terms the loan is advanced; and the man acts accordingly. Is money so advanced a loan or not? If it be a loan, is the moiety of the profit which is receivable *by the creditor*, interest or not? It is said, since both *the requisites of a loan*, the continuance of the *creditor's* property

property in the money *lent*, and *the receipt of a gain*, have place in that contract, nothing prevents its being deemed a loan: however, the moiety of the profit which is receivable *by the creditor*, is not interest, but profit arising from commerce.

What exertion for gain is in this case made *by the lender*? Any merchant tells a public officer, "you must prevent the exaction of exorbitant duties payable at wharfs and the like; in consideration of which, I will give you a quarter of my profits:" as in this case the protection afforded by that officer against the exaction of exorbitant duties, is the exertion for which he receives a quarter of the profits, so, in the first case, the act of furnishing a loan as a capital for trade, and the stipulation then made, constitute the exertion on the part of the lender. Or, in both cases, the money *paid* is similar to gratuitous presents of bread, fruit, mangoes, fish, and the like: it is not *câyicâ*, arising from the personal labour of the borrower; nor interest of its own nature, arising from increase *of stock*; for that is not named in the law as a species of interest, nor is it described under any other kind of interest.

If the merchant trade in *tila*, gold, or the like, and the lender receive from the merchant half the *tila*, gold, or the like, gained in commerce; in that case, since the merchant is independent, the lender's ownership is the only motive for the delivery of the thing. The delivery and receipt are consequently civil acts; and the receipt is no acceptance of things bestowed for religious purposes. There is no consequent sin in receiving those things. Thus some expound the law.

VII. *The several Expositions considered.*

But if the merchant fraudulently withhold the moiety of the profit, he is a promise-breaker, and shall be compelled by the king to deliver it. This creditor, however, exacts more *than legal* interest from the debtor's necessities. But interest, which is exacted at *the pleasure of the lender*, whether at legal rates, or in the form of stipulated interest, and the like, if it be unreceived for some time, can only be taken to an amount sufficient to double the principal.

If the money be advanced on these terms, "take from me a
hundred

hundred *suvernas*, and trade with them on our joint account, but interest must be paid me ;” that commerce is carried on on account of both parties, and the shares must be so distributed as may have been agreed. But if the lender add, “ should the capital happen to be lost, the loss shall not fall on me,” and the merchant acquiesce *in those terms*, the whole loss must be borne by him, through the exigence of his affairs, *which compelled him to accept such terms*; but if his assent were extorted by force, the loss shall not be borne by him: this method is consistent with the reason of the law.

In the case supposed, if the merchant who borrows the money trade in salt, lac, or the like, with or without the knowledge of a *Bráhmāna* who lent the money, the sin falls on that *Bráhmāna* according to the circumstances of his knowledge or ignorance of the particular trade carried on. This is a demonstrated rule.

On the doubt, whether it be money advanced for commerce, or money lent, it is said; one half is a loan vesting temporary property in the user, and the other half is money advanced for commerce. Hence there is, in this case, trade in partnership, and a combination of debt and commerce: to receive interest on the whole sum, without a previous agreement, would be therefore contrary to law. But if the lender deliver the money with this stipulation, “ the whole sum shall be a loan in thy hands, and it shall produce to me half the commercial profit,” there, since the two acts (of advancing a sum for trade and delivering it as a loan) are incompatible, the contract of loan shall prevail; for the property of the former owner is divested by that act. He shall not therefore receive half the commercial profit, but interest on the whole sum: of the profits of trade so much only, as the merchant may voluntarily give, can be received by the lender. If the capital happen to be lost, whether the exonerating clause (“ if a loss happen, it shall not fall on me”) be expressed in the agreement or not, the loss does not fall on the creditor, but on the debtor alone. But if an agreement were made for the payment of half the commercial profit by the debtor, it must be paid to fulfil the agreement, as above mentioned. This has been sufficiently explained.

The *cáyicā* of NÁREDA should be explained as in the gloss
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of

of CHANDÉSWARA, from the sense of the word *śaśwat*, repeated, or again and again: or the method approved by HELÁYUDHA, the *Mitácsharā*, MISRA and others, may be followed: thus *cāyicā* is interest payable daily; and the word *śaśwat* signifies long, as in the example “*śaśwatīh semāh*, many years,” and in other instances. According to VRĪHAS-PATI, it is included in the description of hair-interest, and must be paid so long as the principal remain undischarged. In the text, it is particularly mentioned, “at the rate of a *pana*, &c.” (XXXVI 2) to remove the doubt whether interest should be received daily at the proportional rate of an eightieth part *by the month*: more or less *than that rate* is therefore taken as hair-interest; and such is the current practice. This being the case, the *cāyicā* of NÁREDA, as explained by CHANDÉSWARA, falls under the description of (*cāritā*) stipulated interest.

Were it so, would it not be unpaid; for the text of CÁTY-ÁYANA expresses, “in no other case whatever must stipulated interest be paid” (XXXVII 3)? Payment being requisite when the period, *for which the sum was lent*, had elapsed, the debtor’s inability to make immediate payment occurred *as a circumstance of distress*. Therefore interest then settled, *as the consideration of forbearance*, must be paid, though it be (*cāritā*) stipulated interest. But greater interest, promised before the period had elapsed, in consequence of menaces, need not be paid.

But *cālicā* is regulated by the rate of an eightieth part, and so forth: with or without an agreement, it is interest receivable month by month, on the concurrent opinions of many authors. According to this interpretation, if a creditor be desirous of receiving his interest on a loan, of which the interest has not ceased *because it has not yet equalled the principal*, he must take (*cālicā*) periodical interest. In that case there is no limitation of a subsequent period, *beyond which interest may not be received*; a distinction assumed by HELÁYUDHA. Here it should be noticed, that the word “month” is merely a general instance: accordingly MENU states periodical interest generally. Hence that interest, which is receivable every half-year, is also *cālicā*. Consequently, whatever interest is received from time to time, at short periods, before the debt is discharged, is *cālicā*. But this interest may be included under (*cāritā*) stipulated interest.

However,

However, *śic'hāvṛiddhi*, which ought to be received day by day, but in some instances is paid by debtors to creditors for many days at once, to save trouble, is not (*cālicā*) periodical interest. The *cāritā* of CATYÁYANA has been sufficiently explained.

It should be remarked, that interest at the rate of twenty in the hundred, payable by seafaring traders and the like, and at the rate of ten in the hundred by those who travel through vast forests and the like, is (*cāritā*) stipulated interest. It should not be asked, how can interest at the rate of twenty in the hundred, and so forth, be deemed *cāritā*, as this is described by NÁREDA (XXXVI. 3), since CHANDÉSWARA, in his gloss on the texts concerning those rates of interest, mentions, that interest at the rate of twenty in the hundred, and so forth, must be paid, even though not expressly promised by sea-faring traders and the rest when the loan was received? As interest at the rate of two *panas* a month for one silver coin, though not expressly promised, is paid by the immemorial custom of the country (on the ground, that interest, formerly settled by certain debtors, expressly promising it to their respective creditors, is considered in practice as stipulated interest, and is therefore now valid by tacit consent, though not specified by an individual borrower, and is adjudged by arbitrators quoting *for their authority* approved usage); so in this case, the text (XXXII) is cited as proof of customary interest. Else law must be established on another foundation than scriptural *authority*.

Accordingly MENU does not specify the rate of twenty in the hundred, and so forth; but says, "whatever interest shall be settled by men well acquainted with sea-voyages, &c." (XXXIII). Consequently this sense is deduced *from the text*; such interest only as is settled by merchants shall be paid: if the party himself have not stipulated the rate, that interest only, which has been promised by former borrowers, as instanced by YÁJNYAWALCYA (XXXIII), must be paid. In the text of NÁREDA (XXXVI 3) the word "debtor" must be considered as denoting any person who contracts debts, and follows the practice derived from *the example of* eminent persons.

What is the rate for those who do not traverse the ocean, but cross the SINDHU and other great rivers? It is answered, they are

are travellers by dangerous routes (explaining "*cantâragâh*" in a general sense, instead of restricting it to travelling through vast forests); they must therefore pay ten in the hundred. The meaning is this: such as travel by difficult roads, where life is endangered, necessarily obtain greater profit, and therefore pay higher interest; but those who voyage by sea (a still more difficult route, in the highest degree tremendous, where life is exposed to the utmost danger), transporting large cargoes with great trouble, certainly obtain still greater profit; twice as much should, therefore, be paid by them. When no special agreement has been made respecting the rate of interest, what should be received from those traders who neither travel by dangerous roads, nor traverse the ocean, but buy and sell in their own country? Interest at the rate prescribed by the texts, which specify an eightieth part *by the month*; for this text (XXXII) cannot be extended to a general sense. But if they promise to give greater interest, then indeed such interest should be paid (XXXIII). Since CHANDESWARA expounds the phrase in this text, "men well acquainted with sea voyages," as a mere instance suggesting a trader in general, that general sense is the ground of this inference, coinciding with the *latter part of the* text of YAJNYAWALKYA, "or whatever interest has been stipulated by them" (XXXII.)

If merchants, whether trading by sea, by dangerous routes, or in their own country, receive a loan from a money-lender, with or without a stipulation for high interest, in expectation of great profit; but if they be afterwards accidentally disabled from travelling for the purposes of commerce, and remain at home, or die; in that case, with what interest should the principal sum be received by the creditor from those persons who have been *thus* unable to trade, or from their sons? It is answered, that sometimes those who travel through vast forests remain afterwards at home ten or fifteen years; when they borrow for the occasions of business, without stipulating the rate of interest, it would be inconsistent with the practice of good men to require from them payment of ten in the hundred. By "those who travel through forests," should be understood "those who *actually* perform a journey through forests:" since there is no journey then performed through forests, interest at the rate of ten in the

hundred should not be paid. So in the case proposed, since there is no actual performance of a journey by dangerous routes, ten in the hundred should not be paid, but interest at the rate of an eightieth part, and so forth. But where the merchant actually travels through vast forests, since the whole transaction, from his resolution to undertake the journey, until the conclusion of the journey, is conducted by him *with that view*, a debt contracted by him, even before the journey *be actually undertaken*, is contracted by one who *actually* performs a journey by dangerous routes; in that case, therefore, payment of ten in the hundred is legally required. Sea-faring, "*Sāmudra*," here bears its regular sense, as a derivative from the noun (*Samudra*) sea; and a similar exposition is established from its association in the text (XXXII), "such as traverse the ocean, twenty in the hundred."

If the interest have not been settled, legal interest only should be taken; if it have been settled, a similar exposition is established from the import of the words "well acquainted with sea voyages, and with times and with places," in the text of MENU (XXXIII). Therefore, in this case also, interest at the rate of an eightieth part, and so forth, ought alone to be paid; but interest, promised by the debtor, must be paid (XXXVII). However, if it be promised through compulsion, it need not be paid, as shewn by the sequel of the same text (XXXVII 2). But when men travel for the purposes of commerce, such interest, though promised through compulsion, must be paid, else the description stated in the text (XXXIII) would be unmeaning, "men well acquainted with sea voyages."

Is it not *true*, that stipulated interest need only be paid when promised in a time of distress? (XXXVII.) Yet, in this instance, the borrower experiences no distress; on the contrary, it is a time of exertion for gain. How then can it be intended by CĀTYĀYANA, that interest promised in such circumstances should be paid? *The objection is not well founded*: "a time of extreme distress" is mentioned by way of illustration; else, should a man receive a loan from a money-lender, on a stipulation of more *than regular* interest, to accomplish the construction of a house or the like, which he is anxious to erect, for the sake of

reward in a higher world, he would not pay such greater interest, because it was not stipulated in a time of extreme distress; but he who promised greater interest for the sake of performing his father's obsequies, or celebrating his daughter's nuptials, or the like, must pay it: which would be contrary to reason. The opinion of CHANDÉSWARA and others is therefore accurate, that CATYAYANA only declares undue that interest which has been promised through compulsion.

Where a trader, having promised, or not having promised, greater interest through compulsion, traverses forests or seas in expectation of great profit, but *such* great profit happen not to be *obtained*, what interest should in that case be paid? It is said, whether great profit have been obtained or not, the journey through forests or the like is *performed*; therefore interest at the rate of ten in the hundred, and so forth, or *any* interest which has been promised, must in such a case be paid. All this is deduced from the exposition of the text. But in fact the settled rule should be argued from the immemorial custom of the country.

Wheel-interest is explained by CHANDÉSWARA, where the debtor, unable to discharge the arrear of interest, promises to pay it with interest; that interest, which is so promised, is (*chakra vriddhi*) wheel-interest. It should be understood, that, if the creditor, actually receiving the amount of interest from the debtor, at the very same time lends again that very sum to the debtor, it is not wheel-interest; for the amount of interest becomes, in this case, a principal sum. Accordingly it is said, in the following text of MENU, "He who cannot pay the debt."

XLVIII.

MENU:—He who cannot pay the debt *at the fixed time*, and wishes to renew the contract, may renew it in writing, *with the creditor's assent*, if he pay all the interest then due*.

For if he pay the sum into his creditor's hands, and, having torn the former writing, and executed another writing, receive the same *sum*; the phrase "may renew it in writing," would

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not

* See CLVII. where this verse is again cited:

not be employed. Since the debt is different from the former debt, the writing is then executed for the debt then contracted, without connection with the former writing. But if he do not discharge the sum, he renews the contract in writing for that same debt with interest, after cancelling the former writing. If an artful creditor himself deliver other money into the debtor's hands, and bid him pay the *former* debt, and the debtor do so, surely in that case it is not wheel-interest; interest upon interest should only be considered as valid when no such artifice is practised. This should be determined by the wife. Other *points* will be stated in the chapter on the Recovery of Debts.

It has been mentioned more than once, that hair-interest is *interest* receivable day by day, in consequence of an agreement in this form, "I will pay it daily." Interest by enjoyment is the use and benefit of a pledged house and the like (XXXV 5): "the rent, or use and occupation of a house, and the produce (*sadas*) of a field," according to the literal sense of the verb *sad*, cut down or reap, as remarked by MISRA. It should not be objected, that interest by enjoyment should be included under *cāyicā*, because VYĀSA intends a generic description (XXXIX). Why then is interest by enjoyment specially mentioned by CĀTYĀYANA (XXXVII 3) under another name, "use of a pledge?" and why are *cāyicā* and *bhōgalābha* separately mentioned by VRĪHASPATI (XXXV)? but Sages cannot be censured for the exercise of their *legislative* authority in making a distinction, for the sake of the rule to be delivered, that a pledge is not released so long as the debt be not wholly discharged. Corporal interest, hair-interest, and interest by enjoyment must be paid, so long as the principal remain unliquidated (XXXV 6). If the payment of hair-interest happen to be discontinued at the end of a few days, or if the corporal interest be not received, or if a pledged field or the like be damaged by the act of GOD or the king, in such cases, when the debt is *afterwards* liquidated, hair-interest, calculated from the date of the loan, must be paid; the value of corporal interest must be made good; another pledge must be delivered for use and occupation; or, if the debtor do not *deliver another pledge*, the value of usufruct must be made good. A full explanation of Pledges may be seen under their proper head. (Chap. III.)

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If such be the case, does it not contradict the text of MENU (XLIII); for the inferible sense of the law is, that a creditor should not receive more than double the principal paid at once? No; for the original period for the receipt of hair-interest is *the close of each successive day*: the text is only applicable to other cases. Is it not seen, in some countries, that hair-interest is not received so long as the principal remain undischarged; but is only received for a stipulated period, or for a certain number of days? To reconcile this apparent difficulty, the text of NÁ-REDA is adduced; “but the rate customary in the country, where the debt was contracted, may be different” (XLV.)

If a debt have been contracted on a promise of hair-interest, and half the principal have been discharged at the end of a long period, what kind of interest is afterwards adjudged? It is fit that half the hair-interest should be paid; for it is not proper that the whole interest be struck off when the whole principal is not discharged, nor that the whole interest be paid when some part of the principal has been discharged: and in the case of corporal interest also, if the use and profit of a female buffalo affording much milk, or of a horse or the like carrying great burdens, have been assigned as *cáyicā* interest; in that case, a part of the principal being liquidated, the debtor may assign the use and profit of another milch buffalo, or of another horse or the like, and not allow the profit of that horse and buffalo; for there is no *law* to show the necessity of allowing the use and profit of the thing originally assigned.

But, in the case of (*ād'hibhōga*) a loan on the use of a pledge, a debtor cannot obtain the release of the pledge, however valuable, so long as the principal remain unliquidated (CII). For this reason, corporal interest and interest by enjoyment have been distinguished: and the distinction is well explained, as consisting in the existence or non-existence of a contract of hypothecation.

Where the harvest is fixed as the period of a loan in grain, under the rule of HÁRÍTA (XLIV 2), as expounded in the *Retnācara*, the creditor can only receive double the principal *in kind*; interest therefore cannot, in this case, be received at the rate of an eightieth part, and so forth, because the *general* law for an eightieth part is opposed by the *special* rule of HÁRÍTA.

This inference should be questioned, for such is not the meaning of the *Retnâcara*: the rule of HÁRĪTA is there inserted under the head of (*câritâ*) stipulated interest; and stipulated interest does not exclude the rate of an eightieth part, and so forth: for the grounds of excluding the rate of an eightieth part, and so forth, another authority than scripture must *therefore* be established. The rule of HÁRĪTA should for this reason be considered as relating to stipulated interest regulated by the practice prevalent among former eminent persons, not as establishing a rate for interest on his own authority. Accordingly, should any trader borrow grain on a stipulation for interest at the rate of an eightieth part, and so forth, and selling it conduct commerce, even that is *a fit transaction*.

How then should the text of NÁREDA (XLV) be applied? for it is thus expounded according to the *Retnâcara*: ‘this rate of interest, an eightieth part of the principal, and so forth, is universal, because it is authorized by the law; but a rate fixed by the immemorial custom of a country, is different therefrom, and is not universal, for such local custom only subsists in particular countries: accordingly in some districts grain is currently received back with an advance of half the principal; in others, with a quarter: but if it were the custom of countries that twice the principal alone should be accepted, it would be so in all countries.’ *This objection is not well-founded*; the particular practice of one country is stated in the rule of HÁRĪTA, *not an universal rate*.

Grain doubled at the harvest is not the highest *limited* interest; but is either legal, or stipulated interest, according to the opinion *which may be followed*. The highest interest *stated* trebles the principal; that is, so much as trebles the principal is the highest *allowable* interest. “So of wool and cotton;” that is, on these, as on grain, so much interest as trebles the principal is the highest *allowable* interest, and interest doubling the principal is different.

“Wool or hair of sheep and the like;” in answer to the question, when is the principal doubled, since there is no harvest of wool? the Sage adds, “in one year” (XLIV). In regard to fibres of grass, and the like, it is also the same: “in one year” is understood; and grass and the like are also similarly doubled in one year; and some hold, that the highest interest on grass and the like

like is eight fold of the principal. But others think grass and the like are increased eight fold, and bear interest no longer than until the debt be made octuple : such, therefore, is the highest interest on these articles ; and the word “ fo ” is not extended to this part of the text, *to declare that interest on grass doubles the principal in one year.* This is founded on the coincidence of the text with that of VRĪHASPATI (LXVII) ; for “ length of time ” there denotes the highest *limit of interest.* Why the text (XLIV) is expounded by CHANDÉSWARA, “ on grass and the like, the interest is eight fold for one year,” may be questioned.

In practice the receipt of grain doubled at the time of harvest is very reprehensible. Its partaking of the nature of (*cāritā*) stipulated interest is the ground of this notion, since no other grounds of it are perceived. Or interest on grain doubling the principal at the time of harvest is named usury.

XLIX.

NĀREDA : — But the *rate of interest*, which has been mentioned, is considered as usury on grain*.

The meaning of the text of VRĪHASPATI (XXXV 7) is this : “ the use of a pledge after twice the principal has been realized, and the other two cases there stated, are usurious ; ” this is one proposition : that usury is reprehensible, is another proposition of the text. Consequently, the receipt of grain doubled in one season being usurious, it follows that it is reprehensible. But the receipt of interest at the rate of an eightieth part and so forth should be held blameless, by reason of the practice established by eminent persons : and interest on grain, doubling the principal, appears to be (*cāritā*) stipulated interest ; else it would be exclusive of the six sorts of interest propounded by Sages.

Under the term “ grain,” pease and the like, as well as barley and the rest, are comprehended ; for AMERA says, “ pease and the like are grain in the pod, and barley and the rest are grain in the ear.”

* The last hemistich of a text which is again cited, V. lviii. 2.

If those who travel through forests and the like borrow grain, at what rate should interest *be paid*? Whatever interest they settle, such interest only should be paid (XXXIII). But if no interest be settled, then indeed, since there is no law for the receipt of more than double the principal, interest only doubles the debt. It should not be argued, that the text of HÁRÍTA (XLIV) ordains twice or thrice the principal payable only by such as traverse forests and the like. No author has so explained the text; but, without specifying the eightieth or other legal rates, it marks the interest usually paid by all persons on *loans of grain*.

Some lawyers remark; when a man has borrowed grain to be repaid two-fold, but is unable to discharge the debt at the time of harvest, and the debt long remaining unpaid, if arbitrators adjudge the payment of three times the principal, at the *current* price of a particular month, together with interest, in that case the trebled principal is suggested by the text of HÁRÍTA and others (XLIV, &c.); the valuation is grounded on local custom, and the interest is compound interest: but if they adjudge payment of four times the principal with interest, the quadrupled principal is suggested by the text of VRĪHASPATI (LXIII).

Yet in fact all this depends solely on local custom; for the text of HÁRÍTA, and that of VRĪHASPATI, propound the highest legal interest. At the fit period for limited accumulation of interest, whether three times or four times the principal be then received, the interest is legal; but the receipt of compound interest, antecedent to a promise from the debtor, is not authorized by law. The fit period for limited accumulation will be declared under the title of Limits of Interest.

Admitting that compound interest is reprehensible by general law or local usage, *still the text* (XXXV 7,) *which declares usurious further benefit* after the principal has been doubled, intends loans in gold or the like; for, since the highest accumulation of interest on clothes and other commodities is declared to extend to three times the principal and so forth, it is wrong to censure the receipt of three times the principal *in such cases*.

A *Bráhmāna* asks a loan from another *Bráhmāna*, and the lender, exacting a stipulation for interest at the monthly rate of a *pana* in a *purāna*, delivers the loan, and the other pays the debt within

within the year ; is the receipt of such interest in this case reprehensible or not ? It is said, the receipt of such interest is evidently immoral, since (*câritâ*) stipulated interest itself is immoral, according to the gloss of CULLÚCABHATTA on the words “ any interest which is unapproved ” (XLI) ; and it is held so by MISRA, because the borrower is oppressed by the exaction of excessive stipulated interest and the like.

Periodical interest and corporal interest are also termed immoral by CULLÚCABHATTA : how does that apply ; for if the borrower discharge the debt within the year and pay suitable interest, there is nothing blameable in *the receipt of that interest* ? The answer is, under the authority of the text only ; *but* it is not deemed immoral if received from time to time ; and the text of VRĪHASPATI is adduced to connect the sense, showing the immorality of periodical interest and the rest, in certain circumstances ; not of stipulated interest, *which is universally censured*. Accordingly CULLÚCABHATTA says, “ stipulated interest is immoral, even though it have been *freely* settled by the debtor in a time of extreme distress, and by the creditor through kindness.” It is consequently an improper proceeding of a lender wilfully to violate the law and exact a promise of more than legal interest. On other expositions also, since the rate of an eightieth part and so forth is alone legal as the primary rate, the receipt of stipulated interest at any other rate is not laudable.

If a debt be contracted with an agreement in this form : “ At the end of three months I will repay one coin and a quarter, lend me now one coin ;” the interest amounting to a quarter of *the debt* is (*câritâ*) stipulated interest, for the rate of interest and period of the loan are settled by the debtor. In the case proposed by CHANDÉSWARA, interest on a loan advanced with a previous stipulation in this form, “ if thou wilt pay interest during one year, or half a year, or the like, then only will I advance the loan,” is also a sort of stipulated interest ; for, in this case, there is a promise of paying *a certain amount of* interest at the rate of an eightieth part and so forth. But in fact reason shows, that, excepting the *regular* method of receiving the principal with suitable interest, every disingenuous proceeding is immoral.

VIII. *On the Assignment of Bonds, &c.*

In some instances, a creditor has demanded his money from his debtor *in these words*, “ Pay the debt of a hundred *suvernas*, which is due to me ;” but the debtor has not been able to discharge it ; afterwards, the creditor, reduced to poverty by the circumstances of the times, or *even without necessity*, of his own accord, sells the written contract for that debt to some *other* person : this practice is not immoral ; for it is not forbidden by the law, nor does it distress the debtor.

To the question, what is sold in the case supposed ? the answer is this : not the mere written leaf, for it could not bear so high a price ; nor would the purchaser, on a purchase of the written leaf only, be entitled to receive the sum stated in the writing. Nor is the debtor *sold* ; for the creditor has no property in *the person* of his debtor. Nor is *the money which has been lent* by the creditor *sold* ; for *his property* in that money is already divested ; or even though it be not *wholly* divested, the seller has not at that time an *indisputable* property therein. Nor is the money which will be *subsequently* paid, and which is receivable by the creditor, *sold* ; for it cannot in such a case be money receivable by the creditor, since the purchaser, *not the seller*, will have property in the money, which will be paid by the *present* user or debtor. It is therefore held by some lawyers, that the money which will be paid by the debtor, is acknowledged as the transitory property of the lender ; but, in consequence of the price now received, and of the agreement made to that effect, that property will be divested and transferred to the purchaser : accordingly a sale, consisting in the receipt of a price, is now established from the consequences which are to follow, by means of *taking into consideration* past events* : and the seller has property in the price *received* ;
for,

* The philosophical opinion to which I conceive this alludes, is more expressly stated in other places. A past event, that is, its completion, exists metaphysically as a cause of future events. Strict logicians do not admit this metaphysical existence, and are therefore at a loss to connect causes and effects not immediately consecutive. To solve the difficulty, they have recourse to the relation between cause and effect, which they place in philosophical arrangements under the category quality.

for, in consequence of his present expectation of a future receipt, the buyer assents to the transfer of property in the price to the seller. But that is wrong; for, should the debt be never actually paid, in consequence of the debtor's decease or the like, such a transitory property could not be established: since the money payable by the debtor is become null, the sale of it is also null, and the receipt of the price would be therefore invalid.

We think that this is a secondary sale of the promise of payment, like a gift or sale of *moral* purity. Thus, after the receipt of a loan, the lender's property being divested, and property vested in the borrower, the promise of payment is the only ground for the repayment of the loan when its period has elapsed; and that promise disposes the debtor to give effect to the creditor's *revivable* property, through fear of incurring guilt by withholding payment of the money due to the creditor, or in consequence of a complaint preferred before the king, or the like: in the case supposed, that *promise* bought by any person would induce guilt *in the debtor*, if he withheld payment of the debt from the person who had purchased *the promise*; and, exciting his apprehensions of incurring such guilt, or by means of a suit preferred before the king, or the like, it disposes the debtor to give effect to the purchaser's *contingent* property.

It should not be objected, that payment made to the purchaser would be a violation of promise on the part of the debtor, who had said *to the creditor*, "I will pay the money unto thee." It is a rule, that the reason of the law extends to the representative. There is no breach of promise in his paying the money to the purchaser, who is the representative of the creditor; as there is none on the part of him who has promised to give jewels and the like, and who pays their value.

When a field or the like is sold, an interest of the nature of property, similar to the former owner's property, is vested by the sale in the other party; but in this case, by what secondary notion of a vested interest does it become a secondary sale? From the secondary notion of something producing a lien on the guilt of the debtor if he withhold payment of the money, it is *shown to be a secondary sale*. Consequently, should the debtor and his offspring happen to die without paying the debt, the loss falls on the purchaser, as *it would have fallen* on a creditor who had not sold
the

the demand; but if a thing sold, yet remaining with the seller, be destroyed by the act of God, the price must be refunded by the seller.

In this *assignment of bonds*, one form is a sale made with a written contract previously executed; another is a sale made in the debtor's presence, or with his knowledge; another *again* is a sale before witnesses: these, and many other forms regulated by the custom of the country, such as a sale authenticated by an unattested instrument in the handwriting of the party, or his own recovery of the debt and payment of it to the purchaser, may be understood by a simple exertion of intellect. The form is also similar in the case of hypothecating a written contract of debt: but with this difference, that if the debtor happen not to pay the sum borrowed by him, the intermediate user *or debtor* must make good the debt out of his own funds to the ultimate creditor; and the promise of payment concerns the lender only, but is in the power of the ultimate creditor; consequently the debt cannot be received by the lender, without the assent of the ultimate creditor.

Some person applying to a merchant who lives by money-lending, says, "deliver me cloth to the value of a thousand *suvernas*, and let that value remain a debt due from me;" on those terms, giving a writing, he takes the cloth: what does the value of it become, for no money has been paid? On this doubt it is said, the price of the commodity which was sold, is a debt mentally contracted; interest must therefore be paid on the price of the commodity.

Is not the sense of the word (*rīna*) debt, 'money or goods delivered, and producing gain *to the lender*, in consideration of its remaining *for a time* with the debtor?' But, in this case, since the price of the cloth was not then paid, it could not be delivered, and the requisites of a debt cannot therefore exist. *The objection is not well founded; by fiction* there may be a delivery of the price of the cloth, as there may be a *fictional delivery* of gold or the like, *given* by way of gratuity, though it be not actually produced.

In the parallel case proposed, there is, on the part of the voluntary, a present act of volition to annul his own property, and vest property in another, which amounts to gift, and is not imaginary; but here, since there is no such money as that in consideration

consideration of which property shall be vested in the buyer, after the property of the seller has been divested, the buyer's property is null; and, the intended delivery being imaginary, is it not actually invalid? Admitting the objection, "deliver" is secondary in the definition of debt: and, in the case stated, the thing lent becomes the property of the buyer, *whether it be the price or value of the cloth which is lent, or only the cloth sold*; as in the case of compound interest. This subject has been further treated by me (JAGANNÁT'HA) in the *Rīnavādārt'ha*. In the case proposed, there is a mixed transaction of loan and sale.

Form of a Writing for a Debt sold.

After writing on the assignment the name of the lender, and so forth, it is usual to write, "this sale of a written contract of debt:" and that is proper; for, by selling the written leaf with the letters inscribed on it, the sale of the thing written is also valid, as the approach of horns is *denoted* when *it is said* a horned animal approaches. Thus, since letters must extend to the words, the sale of the words, *constituting a promise*, is certainly valid. Or it may be written, "this bill of sale of a debt;" by this the sale of an unwritten debt may also be effected: and it is equally proper in the present case.

On the reasoning above stated, although the thing promised might not be sold, the promise may be sold, and here the meaning of debt is, money received after such previous promise. The debt belongs to the purchaser alone; hence, if it happen to remain unpaid, the sin consists in not paying the debt due to the purchaser, not in withholding a debt due to the seller. But such interest only as had been promised should be paid; not interest at the rate of an eightieth part, and so forth, when stipulated interest had been previously promised, and no express declaration was made concerning interest at the time of the sale. If a debt be sold by a *Brāhmaṇa* creditor to a *Sūdra*, interest must be received at two in the hundred, the regular rate in the order of classes; not at five in the hundred: for interest is settled by the agreement made when the debt is contracted. Nor should the purchaser then exact a promise of greater interest, for that loan had been already advanced by another person. But, after the
 lapse

lapse of the period stipulated, should the debtor be unable to discharge the debt, the purchaser, who is become the creditor, may, according to some opinions, exact a promise for stipulated interest, or for the *câyicâ* of NÁREDA, as explained by CHANDÉSWARA, at the rate of a *pana*, or half or other fraction of a *pana*; for that is the proper time for a stipulation of such interest, and the debtor is then in the power of him who purchased the debt.

Although there be no express text of Sages on the present subject, this and other rules for contracts valid by usage are deduced from the authority of reason copying sacred law for the sake of legal decision in cases of doubt. A portion of the subject has been inserted by way of illustration; other points may be similarly reasoned by the wise.

Form of a Writing for a Debt pledged.

After writing the name of the lender, and so forth, and subjoining "this contract of debt on the pledge of a debt;" it should be added, "a debt of so much is contracted by me, giving unto thee, as a pledge, a debt amounting to such a sum contracted by such a one, on an agreement for so much interest, in such a year, month and day, and in the presence of such and such persons," and so forth: it should be *further* written, "if this debt be not discharged by me on such a day of such a year, then the debt due to me by such a person shall be thine," and so forth, according to circumstances. This and other forms, as suggested by common sense, are stated by way of example, to guard against defective writings.

In this case the first debt should not be recovered *from the debtor*, until the close of the period for which the second loan is made. But, if *no more than* half or other portion of the original debt were made over as a pledge, then a proportionate part may be recovered from the debtor; and it should be inserted in the instrument. However, it is not proper to fix a period for the second loan extending beyond that of the first loan. This and other points may be inferred from reasoning.

Form

*Form of a Writing for a Price lent, or Credit given
in consideration of Interest.*

It should be a document of the debt, not a document of sale only, because the sale is shown by the declaration of the debt; for the declaration in words runs thus, "I borrow the value of this commodity, so and so, which is bought of you." It should not be affirmed, that *it might be drawn* conversely; and thus the instrument would be only a bill of sale. Were it so, the debt would not be *the chief object of the writing*, and the clause fixing the period of *repayment*, and so forth, could not be well arranged. But, should it be thought necessary to authenticate the purchase, a separate document would be proper. To expatiate *in this place* would be vain. Sales and the like may be similarly authenticated by bills of sale: *but* that should be hereafter discussed under the head of Sales, and so forth.

IX. *On Usage in general.*

Doubts occurring on many subjects have been solved by reference to practice; a decision being therefore valid when founded on the practice observed to exist, is not law useless? Practice, which is founded on law, prevails; hence usage, inconsistent therewith, must be abrogated: but where no express law is found, one should be established on approved usage.

L.

MENU:—What has been practised by good men and by virtuous *Bráhmanas*, if it be not inconsistent with the legal customs of provinces or districts, of classes and families, let him (*the king*) establish.

What is not inconsistent with the usages of provinces, classes, and families, and has been practised by virtuous and learned *Bráhmanas*,

Bráhmanas, though it be law not found in codes, let him establish.

CULLÚCABHATTA.

By the expression, “law not found in codes,” it is intimated that law should be established on approved usage, else it would have been said, “if there be no *express* law.” But the practice of *forbearance*, which has been introduced by good men, through tendernefs, in consideration of the debtor’s inability to pay, and so forth, should not be abolished. The use of law is only to prevent the introduction of multiform practices at the will of men of the present generation. Where many texts of law are inconsistent, or many interpretations of the same text are contradictory, usage alone can be received as a rule of *conduct*: and practice, which differs in some respects from positive ordinances, but is not remote from ancient legislation, can only be confirmed by its *general* connexion with law. Consequently that practice which is conformable to law is best, but that which is inconsistent therewith must be abolished; yet, if that may not be, practice inconsistent with law must be nevertheless retained. But where no *positive* ordinance is found, there is nothing inconsistent with any known law, and in that case approved usage alone must regulate *proceedings*. Hence it is said, “human tradition is not unfounded.” Still, however, the example of learned and virtuous *Bráhmanas* should be followed for the sake of prosperity, not the practice of immoral and foolish *Súdras* and the rest. This and other points may be viewed by a man’s own judgement, and it must be so understood in all matters, not in cases of debt alone. Thus have been discussed the various sorts of Interest.

I.

SECT.

SECT. III.—*On Interest specially authorized, and specially prohibited.*

ART. I.—*On Debts bearing Interest, without an express Agreement.*

LI.

CÁTYÁYANA:—Though a loan be made *expressly* without interest, yet, if the debtor pay not the sum lent after demand, but *fraudulently* go to another country, that sum shall carry interest after a lapse of three months.

Uddhāra (the term employed in the text) here signifies money received without a promise of interest. “If he go to another country,” if he abandon the country in which the creditor resides, that debtor should *immediately* pay the sum lent.

The *Retnācara*.

If he abandon the country in which the creditor resides; that is, if he go to another country.

“After a lapse of three months;” if it have been demanded, it shall bear interest at the end of three months.—The *Chintāmeni*.

That is, if the sum lent be demanded, but not paid, it bears interest after a lapse of three months from the date of the loan. In this case, a loan has been amicably made by the creditor without any stipulation for interest. It is proper that no interest should be paid by the debtor, while friendly intercourse is maintained: but if he do not pay it after demand, the friendly consideration no longer subsists, and interest should therefore be paid. In that case it commences at the expiration of three months under the authority of the law. However, should he fix a near term after the first demand, with the assent of the creditor, and pay it at that term, no interest accrues: accordingly it is said in a text, which will be cited, “after more demands than one.”

But no interest accrues within three months, even though the debt be repeatedly demanded ; for no law *has authorized it*.

If it be asked what sort of interest ? *the answer is*, interest at the rate of an eightieth part, and so forth, as prescribed by law. But CULLÚCABHATTA expounds the text of MENU (XLII) as relating to this case : “ Interest exceeding the fixed rates, or those prescribed by law, and contrary to, that is different from, interest agreed on, or, in other words, interest not agreed on, is invalid, and cannot be *exacted* : interest not agreed on cannot be *exacted* at rates not declared by the law ; for there can be no interest which is neither settled by the parties, nor prescribed by law.” Consequently, in a case where none was agreed on, interest should be received at the rates prescribed by law, in the order of the classes. So the following text :

LII.

VISHNU :—After the lapse of one year, debtors, *who have not acted fraudulently*, must pay interest, as allowed, even though not agreed on *at the time of the loan*.

“ As allowed ;” at the rate of two and three in the hundred, and so forth, in the order of the classes. He declares another distinction in respect of interest without a special agreement.

LIII.

VISHNU :—*Sages have declared it an usurious mode* ; yet a lender may exact five in the hundred.

“ From twice-born men,” must be supplied in the text : hence it is an usurious mode, originating with abject persons. MENU and the rest have declared it *so* : this must be supplied in the text. Consequently a lender may exact, even from a twice-born man, the interest which is receivable from a man of the servile class, or five in the hundred ; but such conduct is immoral :

moral: and this must be understood of a sum lent without any agreement for interest, and which has been demanded.

LIV.

CĀTYĀYANA declares it:—What has been amicably lent for use, shall bear no interest until it be demanded back; but if, on demand, it be not restored, it shall bear interest *on its true value* at the rate of five in the hundred.

The rate of five in the hundred, which is mentioned in *these texts*, supposes a debtor of a twice-born class; for, if it concerned a debtor of the servile class, it would not exhibit an usurious transaction, but would be a vain repetition of the rate of five in the hundred. Hence it is CULLÚCABHATTA's interpretation, that, because a lender may exact five in the hundred from a debtor of a twice-born class, therefore do Sages term it an usurious way.

It is, *however*, proper to consider the phrase, "the lender is entitled to five in the hundred," as a mere repetition of the rate of interest receivable from a debtor of the servile class; for it is difficult to establish another rule of interest: and the sense is, Sages have propounded this rate of interest as the way of money-lending; therefore is a lender entitled to it. This may be argued on the authority of VĀCHESPATI MISRA; for he says as much in his gloss on a *subsequent* text (LVI 2): and it is proper to establish the same induction in the present instance; for there is no difference; and this interest should be understood in all cases where no agreement for interest was expressly made.

If a debtor, having received a loan free of interest, go to another country after the debt has been demanded, interest is ordained after the lapse of three months; the Sage also propounds interest in the case of a debtor who remains in the same country.

LV.

CĀTYĀYANA:—A debtor, who, even residing in his

own country, pays not *the debt* after more demands than one, shall be forced, however unwilling, to pay interest on it, though not stipulated, *after the lapse of one year.*

Meaning the very same case, VISHNU says in the text above cited (LII), "after the lapse of one year."

According to MISRA, the phrase "*if he go to another country*" (LI) is indeterminate; for, citing the last text (LV), he says, all this supposes payment fraudulently withheld; but, in a case void of deceit, the rule of VISHNU (LII) *is applicable.* Yet, in fact, a journey to another country is equivalent to fraud; but he who resides in his own country is not *supposed* to practise fraud, but only procrastination. Both texts therefore coincide. Thus, the two different periods for the receipt of interest are regulated by the practice or omission of fraud, instanced in the *debtor's* journey to a foreign country, and *his* residence in his own country. It is then only considered as a journey to another country, when the debt cannot be demanded at the place where the debtor resides; not when he merely quits the village, and so forth. Even though both parties reside in the same town, yet if the debtor abscond whenever he sees the creditor, it is *the same with* a journey to another country. Or, if both reside in a foreign country, it is a residence in the same country. Hence both texts coincide in *considering* the fraudulent intent of the *debtor*: and if a debtor, from whom payment is demanded, go to another country after appointing a time of *payment*, and returning pay the sum at the time appointed, there is no fraud.

"Pays not" (LV); "the *debt*, or principal sum," should be supplied in the text. "After more demands than one;" after repeated demands. The reading approved by CHANDÉSWARA is *āvahēt* instead of *āharēt*; still the meaning is, "must pay to the creditor." Consequently, the ascertained sense of the text is this: in the case of a loan made through friendship, if it be not paid after demand, and any fraud be practised, interest, though not *previously* agreed on, accrues after the lapse of three months; but if no fraud be practised, after the lapse of one year.

LVI.

LVI.

CÁTYÁYANA:—Should a man, having bought a marketable commodity, *fraudulently* go to another country, without paying the price of it, that price shall bear interest after three seasons, *or six months*.

2. *Even without a journey to a foreign country, a deposit, the balance of interest, a commodity sold, and the price of a commodity purchased, not being paid or delivered after demand, shall bear interest at the rate of five in the hundred, if the debtor be a 'Súdra**.

The third measure of the second verse is read in the *Chintāmeni*, *Yāchyamānōnachēddadyāt*, instead of *Yāchyamānamadattanchēt*: (*it makes no change in the sense.*)

Should a man, having taken a marketable commodity or vendible thing, such as cloth or the like, go to another country, that is abscond, without paying the price of it, *that price shall bear interest* after three seasons, or six months. What interest? The Sage subjoins it, “A deposit &c. shall bear interest at the rate of five in the hundred” (LVI 2). The prohibition of interest on a deposit, and on the price of a commodity, will be explained as *restricted* to a deposit and price not demanded. “Balance of interest;” the compound term is in the form of apposition called *tatpuruṣha*. Such is MISRA’S opinion.

The terms may be joined in the form called *Carmadhāraya*; “interest and the balance of it;” for this apposition is preferable. If it be asked, balance of what? the answer is suggested by the nearest term, balance of interest. Such is CHANDÉSWARA’S interpretation. But it may be questioned, why the terms should not be explained, in the apposition named *Carmadhāraya*, “remaining interest.”

Here it should be remarked, that, according to many commentators,

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* The last verse is again cited in Book II. Chap. i. V. 32.

mentators, the period when the principal is doubled, excepting this case of periodical interest, is the time when the debt should be paid *by the debtor*, and interest be received *by the creditor*. If a debtor do not pay it, although it be then demanded, but put off payment, saying, "it shall be paid to-morrow, or it shall be paid the day after to-morrow," in that case, legal interest accrues after six months: "balance" is here a general instance. According to others, if an honest debtor, being then unable to discharge the debt, stipulate interest and renew the contract, interest commences from that date, and is wheel-interest: since interest is here stipulated, the rate of two in the hundred, and so forth, is not applicable to this case.

Or it may be thus explained: If a balance of interest only be due, there is no wheel-interest: for this reason the word "balance" is here employed. But, if the whole interest be due, interest also accrues after the lapse of six months, under the rule exemplified by the case of the staff and bread*. But, if the interest have been paid, and the principal only be due, it bears no interest, however long it remain unpaid (XLIII). In this case it must have been particularly specified by the parties, "that, *which remains due*, is the principal; this, *which is paid*, is the interest." In the case of periodical interest, also, if it be not *regularly* paid month by month, this text (LVI) is applicable.

"A commodity sold, and the price of a commodity purchased (crayam vicrayam †):" that which is purchased (*crīyatē*) is (*craya*) the commodity; that for which a vendible commodity, as a cow or the like, is sold (*vicrīyatē*), is (*vicraya*) the price. Here also three seasons are understood. Therefore, on a bailment, on the balance of interest, on a vendible commodity, and on the price of a commodity, if they be demanded and not delivered, interest must be paid after six months, at the rate of five in the hundred, by a defaulter of the servile class; for it coincides with the rate *prescribed for that class* (XXIX 2). MISRA.

Some hold, that, if three seasons must be also understood in this text, the preceding text would be superfluous; it is therefore proper

* The rule may be thus expressed: "the greater includes the less." The example alluded to is this: one bids another throw away the bread touched with the staff; of course the staff was no less to be shunned than the bread it had soiled.

† In the usual acceptation, the sense would be 'purchase and sale.'

proper not to connect the terms with the three seasons there mentioned. How then is the period determined when interest shall commence on the balance of interest, and so forth? Being mentioned in the same text with *the price of a commodity, interest commences* on these, as on the price of a commodity, after three seasons.

That should be questioned; for, since the phrase must be separately referred to "deposit" and the rest, there is no difficulty in this construction of the text, "on the price of a commodity (*vicraya*) interest accrues after three seasons." Why has not the Sage inserted in this text, "after three seasons," and, "go to another country," and omitted those terms in the preceding text? *The objection is not admissible*, for with Sages there can be no expostulation.

By saying, "must be paid by a defaulter of the servile class," it is established, that, in the case of amicable loans, interest at the rate of five in the hundred shall only be paid by a *Súdra*; for interest on *such* a loan, and on deposits and the rest, can only be payable *by him*, after the lapse of three months, and six months respectively. Therefore a man, who, after receiving the price of the cow, does not deliver that cow when demanded, though sold by him, and a purchaser who does not pay on demand the just price of a commodity purchased, must pay interest at the rate of five in the hundred *and so forth*, in the *inverse order of classes*.

The *Retnácara*.

For a series may be either direct or inverse.

Does the cow, or the price of the cow, bear interest at the rate of five in the hundred? It is the same thing; for, since a cow cannot be divided, it is only her value that is divided, as has been already mentioned. If a man, having bought a cow, go to another country without paying the price, must the cow or the price be delivered with interest after three months? It is said, the price only must be paid with interest; for, after the purchase, the cow became the property of the purchaser. Accordingly, on religious occasions, people dismiss bulls and the like, which they have purchased for a price promised *but not yet delivered*. Purchase is only forfeited by neglect during a specific time. To expatiate would be vain. But he who, having sold a cow and received the price, does not deliver the cow sold, must give her with interest after six months.

In the preceding text a demand must be absolutely understood : if the thing be demanded but not delivered, it bears interest ; not, if no demand be made. Again ; under the expression “ go to another country ” (LVI 1), interest after three seasons is ruled, if fraud be practised, by the same reasoning with that above stated.

LVII.

CÁTYÁYANA :—But he who, having received a chattel lent for use, goes to a foreign country without restoring it, must pay interest, according to the value of it, after three seasons, *or six months*.

“ A chattel lent for use ” (*yāchitaca*) ; a thing intrusted to him. The *Retnācara*.

Meaning ornaments or the like for decoration, which a man, asking (*yāchitwā*) from any person, has obtained. In regard to this, the same practice prevails with that respecting *other* bailments.

But MISRA says, the *following* texts of NÁREDA concern chattels intrusted for use.

LVIII.

NÁREDA :—There shall be no interest, without a special agreement, on valuable things lent through friendship *for use, not for consumption* ; but, even without agreement, property so lent bears interest after half a year ;

2. This is declared to be the legal rate of interest on amicable loans. But the *rate of* interest, which has been mentioned, is considered as usury on grain.

He thus expounds the texts : the word “ give ” here signifies intrust or lend *for use* ; there is not consequently any contradiction to the text above cited (LI).

Such

Such being the case, it is made evident, that a loan for use, which is similar to a deposit, bears interest after six months, if it be not restored *on demand*. But the text of NÁREDA is cited by CHANDÉSWARA, after discussing loans for use, with the text of VISHNU (LII) interposed. This opinion is thereby intimated : a loan advanced *free of interest*, in consequence of some apprehension from human causes, bears interest in three months after it has been demanded ; but a loan, which is advanced through friendship, bears interest in six months after it has been demanded. The text of CÁTYÁYANA (LIV) is cited in the *Viváda Chintámeni*, and by CULLÚCABHATTA, for this import ; and *this* text must be similarly expounded. This observation of some lawyers is not *well founded* : for CHANDÉSWARA has thus arranged *the compilation* : inserting all the texts of CÁTYÁYANA, he quotes texts of other Sages ; else, if the text of CÁTYÁYANA, (LIV) had the same import with that of NÁREDA, it would be wrong to interpose *another*. Therefore MISRA's interpretation should be deemed right in this instance.

The term “ without agreement,” which occurs in both hemistichs, signifies “ not in any manner expressed in words,” *that is*, not stipulated : hence, if interest have been expressed by the borrower, the creditor may exact some *interest*. “ Without agreement ” *may be explained* without a declaration of its bearing interest, without any stipulation of interest ; for the particle A' is explained by AMERA, assent or promise. Or the term might signify “ interest not settled with the consent of the borrower,” and, as here used, “ that which has not been settled to bear interest with the consent of the borrower.”

“ Usury on grain ” (LVIII 2) ; on grain lent without any agreement for interest, but not repaid on demand. The rate of interest, which has been declared by Sages, such as twice the principal, and so forth, is deemed usury. On a loan advanced, with a declaration that interest shall on no account be received thereon, should the creditor afterwards require interest, from the circumstances of the times, or in consequence of a breach of promise, no such interest is allowed : though not declared by the text of any Sage, this may be deduced from reasoning by wise *investigators*.

According to MISRA, interest accruing in all these cases, after
the

the lapse either of three or of six months, must be understood of payment fraudulently withheld ; but, if no fraud be practised, interest commences after the lapse of a year, under the rule of VISHNU above cited (LIV). In fact, a journey to another country indicates fraud ; and another country is that, during the debtor's residence, in which the creditor cannot demand payment of the debt : herein MISRA and CHANDÉSWARA concur. But, according to CHANDÉSWARA, a debtor offends not by going to another country on urgent business, as has been already noticed. In the case of a commodity purchased and the rest, interest also commences after the lapse of a year, if the debtor have not gone to another country : this is deduced from the expression in the *Vivāda Chintāmeni*, " in all these cases ;" and is not disallowed by CHANDÉSWARA, CULLÚCABHATTA, and the rest.

On a loan made without interest, and of which payment is withheld after demand, interest accrues at the end of three months : on other things fraudulently withheld after demand, such as a deposit, a bailment for use, or the like, interest accrues at the end of six months ; but not restored through inability, and submissively refused, they bear interest after the lapse of a year. Such is the opinion of CHANDÉSWARA, CULLÚCABHATTA, MISRA, and others. If payment be withheld by one taking the protection of some person who may awe the creditor, how soon interest commences in such a case, is not expressly said by any author.

According to the *Mitācsharā*, interest is in some cases due without a special agreement, as is declared generally by NÁREDA (LVIII) ; but remarking, that " interest without a special agreement is in certain cases prohibited," the author of the *Mitācsharā* subjoins, as a particular rule, the text subsequently cited (LXXI). Consequently, from the several applications of the general and particular rules, interest without a special agreement accruing at a certain period on loans advanced free of interest, appears obviously suggested ; but no interest, without a special agreement on the price of a commodity, and the rest. That, however, is not satisfactory ; for interest without a special agreement is allowed on things amicably lent ; and fines and the rest would be vainly included in the second text (LXXI). This text, therefore, is not opposed to the preceding text (LVIII) ; but it restrains

restrains a purchaser, who covetously demands interest at the same rate with loans, because a commodity purchased by him has long remained with the seller. Accordingly the text of CÁTYÁYANA (LVI 2) has a similar import; and the same rule should be understood in regard to the price of a commodity purchased.

In this gloss, the third measure of the text of CÁTYÁYANA (LVII) is read "after the lapse of a year," instead of, "after three seasons." Consequently, should a man, who has received a loan exempt from interest, go to another country before it be demanded, *he shall pay* interest after the lapse of one year (LVII); but if he go to another country without restoring it after it has been demanded, *he shall pay* interest after a lapse of three months (LI). The word "*yáchitaca*" must signify a loan in general, instead of a chattel lent for use, for this text (LVII) is inserted after stating the text *first cited* (LI). If one, who remains in his own country, do not pay the debt after a demand, it bears interest from the date of the demand; for the text of CÁTYÁYANA (LV) does not specify a period.

According to this gloss, what is the purport of the text of NÁREDA (LVIII)? The answer is, two cases have been declared according as the debt has, or has not, been demanded from one who goes to another country; in regard to him who resides in his own country, one case has been declared, *that is, the case* where the debt has been demanded; it is proper to refer the text of NÁREDA to the case of one who resides in his own country, but from whom the debt has not been demanded. Were it so, what would be the rule where a demand was made after a lapse of seven months? In reply it is asked, why does the creditor neglect interest, to which he is entitled under the authority of the text, after the lapse of six months? if through tendernefs he exact not interest, the debtor need not pay it.

On this exposition, the text of VISHNU (LII) concerns one who has received a loan for use, and goes to a foreign country before it has been demanded; and the text of CÁTYÁYANA (LVI) ordains interest, after six months, on deposits and the like *not restored* after demand. According to this interpretation, if ornaments or the like be asked and obtained for a nuptial festivity or the like, they are similar to a deposit, and are not loans, for they are stated by YÁJNYAWALCYA with deposits (Book II. Chap,

Chap. i. V. 10). But if an agreement were made at the time of receiving a loan exempt from interest, or the like, in this form, "it shall be restored by me at the end of one year;" in this and similar cases, if the thing be not restored after the period has elapsed, it then bears interest, and not after six months. This and similar rules may be deduced by the wise from arguments consistent with common sense. But the author of the *Mitācsharā* is revered by CHANDÉSWARA and the rest, and is more ancient than they. Of the two opinions which should be rejected, which adopted in practice, must be determined from the difference of times and of places.

ART. II.—*On the Limits of Interest.*

LIX.

GÓTAMA:—The principal can *only* be doubled by length of time, *after which interest ceases.*

That which is lent (*prayujyatē*), is (*prayōga*) the principal. The money lent can be doubled, that is, can only be doubled; else it would be useless to declare, that twice *the principal* may be received on account of the length of time *elapsed*. By the word "only" it is forbidden to receive more than twice the principal. Accordingly CHANDÉSWARA says, the word "or" in a text already quoted from VRĪHASPATI (III) is indefinite, and also suggests a debt doubled, or the like. "By length of time;" counting from a period somewhat less than sufficient to double the principal, interest ceases if the debt remain longer due. This is meant in a text cited from VRĪHASPATI (XXVI). Else the mention of double the principal in a text of law propounding right and wrong would be useless. The text cited from HÁRĪTA (XXX) makes this evident; for the verb there used (*sansthā*) signifies *stops* or "bears interest no longer:" and this interest, sufficient to double the principal, is the highest interest receivable

receivable on gems, *gold*, and the like, not on grain or the like, for *such limitation of interest on grain and the rest* is opposed by a special text, which will be cited.

CHANDÉSWARA remarks, "this concerns a loan of valuable things in general:" by the term "in general" it is declared that this text is a general law; it follows, that special rules are thereby opposed. Accordingly MISRA declares the full meaning; "this concerns gems, *gold*, and the like, as ordained by CÁTYÁYANA."

LX.

CÁTYÁYANA:—For gems, pearls, and coral, for gold and silver, for cloth made of *cotton*, the produce of fruit, *or made of silk*, the produce of insects, *or made of wool*, the produce of sheep, the interest stops when it doubles the debt.

"Stops when it doubles the debt;" accumulates no further. "Coral," expressed in the plural, implies "and the rest," by which shells are included *in the text*; for HÁRÍTA declares, that interest ceases when it has doubled the principal at the rate of eight *panas* in twenty-five *purānas*. (*Purāna* is a name for a certain number of shells.) This induction is consistent with practice; and it is proper that double the principal be the limited accumulation on shells, since no special rule has been declared. It is the same in respect of conchs and the like.

"Of the produce of fruit;" as cotton and the like. "Of the produce of insects;" as silk and the like. "Of the produce of sheep;" as blankets and the like. The *Retnācara*.

LXI.

MENU, stating generally, that "interest on money received at once, *not month by month, or day by day, as it ought*, must never be more than enough to double the debt, *that is, more than the amount* of

Manu VIII. 151

of

4. 2
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of the principal paid at the same time," adds a special rule:—On grain, on fruit, on wool or hair, on beasts of burden, *lent to be paid in the same kind of equal value*, it must not be more than enough to make the debt quintuple*.

"Grain;" as rice, barley, or the like. "Fruit" (*sada*) or any thing produced from trees. Here "tree" is merely illustrative, for "the produce (*sada*) of a field" occurs in a text which will be cited from GÓTAMA (LXII). "Wool or hair," what is afforded by sheep, cows, and the like, as wool, cow-tails, and the like, as appears from the derivation of the word (*lava*) what is shorn (*lūyatē*). The *Retnācara*.

What is shorn (*lūyatē*) is wool or hair (*lava*), such as wool and other hair on the body (*lōman*). CULLÚCABHATTA.

"Hair" (*lava*); any thing to be shorn (*lavaniyam*), except wool; that is, hair on the body (*lōman*) and the like.

The *Vivāda Chintāmeni*.

"Wool or hair" (*lava*); cow-tails and the like.

The *Dīpacalīcā*.

"Wool or hair" (*lava*); the fleece of sheep, the pod of musk-deer, and the like. The *Mitācsharā*.

All therefore agree, that the word "*lava*" is synonymous with *lōman*, being derived from the same crude verb (*lu*, cut or shear). But MISRA thinks, hair other than that of sheep is meant in the text of MENU, because it is opposed by the text of CĀTYĀYANA (LX). But, according to the *Retnācara* and the rest, this text (LX) concerns cloth alone; it is almost expressly said so by CHANDÉSWARA.

"Beasts of burden;" employed for transport, as horses and the like. On these, the interest of the loan must not exceed the quintuple; with the principal it must not amount to more than quintuple; it can produce no more. *That the quintuple includes the principal is thus inferred*; as it is declared, that a debt is doubled in fifty months, and *accumulation* then stops; that is, interest ceases; and consequently the principal is one part, and the interest another part, which united make the double sum; so, in

* The first hemistich has been already quoted (XLIII).

in this case also, by parity of reasoning, the principal is one part, and the interest four parts, which united make the whole quintuple sum. Accordingly, any such debtor, who has borrowed grain or horses valued at a hundred *pieces of money*, for interest at the rate of two in the hundred, however long the period of debt may be, can only be liable to pay grain and the like amounting in value to five hundred *pieces of money*, and no more. —The *Ketnācara*.

Here the rate of two in the hundred is a mere example: on a loan secured by a pledge also, where the rate of interest is an eightieth part of the principal *by the month*, the interest can only double the principal, which consisted of gems, *gold*, or the like: and, by parity of reasoning, it can only make the debt quintuple, if it consisted of grain or the like; for no other limit of interest is found in the *codes of law*. VRĪHASPATI (XXVI), declaring that the principal is doubled even in the case of a loan secured by a pledge, states that alone as the limit of interest; and it concerns gems, *gold*, and the like, for it has the same import with the text of CĀTYĀYANA (LX).

On this it should be remarked, say some lawyers, that the rule regards priests only; but, if the debtor be of the military or other class, interest must make the debt treble, quadruple, or quintuple, in the order of the classes: else it would be a great disparity, that interest payable by a *Sūdra* should cease after twenty months; and, payable by a *Brāhmaṇa*, after fifty months. That is wrong; for no Sage has mentioned interest on gems, *gold*, or the like, more than sufficient to double the principal. As interest on a loan secured by a pledge stops at the end of six years and eight months, but, if there be neither pledge nor surety, at the close of fifty months; so, if the debtor be of the sacerdotal class, interest stops at the end of fifty months, but, if he be of the servile class, at the end of twenty months: there is no *unjust* disparity.

Interest on grain or the like makes the debt quintuple in so much time as is sufficient for interest to become equal to four times the debt, whether at the rate of an eightieth part and so forth, if a pledge or the like have been given, or at the rate of two in the hundred and so forth, if there be neither pledge nor surety; not in so much time as would make *other* debts double: else, since the law ordains monthly interest at the rate of an eightieth part and so forth, something less than twice the principal would

be

be received on grain or the like, if the period elapsed were one day short of eight months above six years, but five times the principal would be received on grain and the like if the eighth month were completed; which would be a great disparity. Since fifty months and various other periods are not ruled *universally*, it is proper to affirm, that interest ceases at those periods respectively, when it has risen to so many times the principal.

LXII.

GÓTAMA :—Interest on milk or curds, on *the* hair of goats and the like, on the produce of a field, and on beasts of burden, shall rise no higher than to make the debt quintuple.

What is produced from cattle (*paśórupajāyatē*) is (*pasúpaja*) the produce of cattle, such as milk and the like, excepting however clarified butter. The *Chintāmeni*.

In the *Retnācara* a gloss is found, “milk, clarified butter, and the like.” It is liable to objection; for interest making the debt octuple will be declared for clarified butter.

“Hair” (*lōman*); wool; for AMERA explains wool, the hair of sheep and the like.

“The produce of a field;” fruit produced from a field, as barley, wheat, plantains, mangos and the like.—The *Retnācara*.

It is also proper to include grain *in general* under this term. Interest on grain, making the debt quintuple, is declared by MENU and GÓTAMA; but by VRĪHASPATI it is declared to make the debt quadruple.

LXIII.

VRĪHASPATI :—On the precious metals or gems the interest may make the debt double; on clothes and inferior metals, treble; on grain, quadruple; so on fruit, beasts of burden, and wool or hair.

“Precious metals;” gold and silver. The *Retnācara*.

It is a general expression comprehending gems and the like ; for the rule coincides with that of CÁTYÁYANA (LX).

The term “ inferior metals ” signifies *all* other minerals except gold or silver, namely copper and the rest.—The *Retnácara*.

Exclusive also of gems and the like ; for otherwise it would contradict CÁTYÁYANA. It is ordained by this *text* (LXIII), that interest on grain, fruit, hair or wool, and beasts of burden, may make the debt quadruple.

LXIV.

VISHNU, cited in the *Retnácara* :—On precious metals, *or gems*, the highest interest shall make the debt double ; on cloth, treble ; on grain, quadruple ; *on fluids, octuple* : on female slaves or cattle, the offspring shall be taken as interest.

On female slaves and the like, and on cattle, such as cows, female buffaloes and the like, which the owner, unable to maintain them, has lent to some person that they may be supported and bear offspring, allowing *as the consideration of their support the milk of the female quadrupeds, or the service of the female slaves,* and which have remained long with him, the offspring shall be the only interest ; that is, no other interest shall be taken.

CHANDÉSWARA:

The text should be read, “ on grain treble, on cloth quadruple ; ” by which the remark of CHANDÉSWARA is justified : “ VISHNU, VAŚISHT’HA, and HÁRÍTA, declare that interest on grain may make the debt treble.”

Before the phrase, “ on female slaves and cattle, the offspring shall be the interest,” “ on fluids octuple ” has been omitted by the error of the transcriber ; for it is found in the *Viváda Chintāmeni*, and the same is propounded by YÁJNYAWALCYA. “ Fluids ” intend salt (*though crystallized*), and oil and similar commodities.

LXV.

YÁJNYAWALCYA :—The offspring of female slaves or cattle *shall be taken as interest* ; on some fluids

the highest *accumulation through* interest may be eight times as much *as the principal*; on clothes, grain, precious metals or gems, it may be *in order* four times, three times, or twice as much *as the articles lent*.

The offspring of female slaves or cattle, taken as (*vriddhi*) interest, or increase in its accepted sense, is not the highest *legal* interest (*paramavriddhi*), for the term is explained by authors according to its derivative sense (*varddhana*) increase in general (from the crude verb *vriddh*, grow) : the offspring of cattle and of female slaves is the only interest; it is possible that cattle and female slaves should be lent by one who is unable to maintain them, and who wishes they should be supported and bear offspring.

The *Mitácshára*.

SÚLAPÁNI, in *his* commentary on YÁJNYAWALCYA, says; since there can be no other interest on female goats and the rest, and on female slaves and the like, placed as pledges, their offspring is the only interest. The highest interest on oil and the like lent at interest, being added to the principal, makes the debt octuple, and accumulates no further.

Thus, according to some opinions, cattle and female slaves are not considered in such a case as constituting a debt; and it is intimated in the gloss of the *Mitácshará*, that they do not constitute a debt: since they belong to the original master alone, they do not fall under the description of debt. Yet, if female slaves and the rest be at any time accepted as loans by any person, then the limit of interest should be deemed the same as on gems, *gold*, and the like; for no special rule has been delivered.

“Cattle” is understood in the feminine gender, from the contiguous term “female slaves;” hence it is rightly expounded, female goats and the like, and cows and female buffaloes and the like: in fact the term “female *slaves*” is a general illustration.

LXVI.

VASISHT'HA :—Gold, silver, and gems, may be doubled; grain trebled; fluids, *as sugar just expressed*

pressed and the like, are under the same law with grain ; and *so rare* flowers, roots, and fruit : what is sold by weight, *except gold and the like*, may make the debt eight fold.

“ Fluids ; ” the juice of sugar-cane and the like : these also are trebled. The *Retnācara*.

It is expounded, juice of sugar-cane and the like, because it will be declared, that oil, salt, and similar commodities, are increased eight fold.

“ And flowers, roots, and fruit ; ” by the particle “ and ” the phrase is connected with the word trebled, to which the sense of the text reverts : the construction therefore is, “ so flowers, roots, and fruit, are also trebled. ” CHANDÉSWARA gives a similar exposition. In the *Vivāda Chintāmeni* it is observed, that interest on the produce of fruit, insects and sheep, and on flowers, roots, and fruit, is declared by CĀTYĀYANA (LX), and by VAŚISHT’HA (LXVI) to make the debt double, and treble. The passage at large will be quoted from MISRA in another place.

“ What is sold by weight ; ” literally, what is held in the scale ; namely, at the time of sale for the purpose of determining its quantity ; and that is camphor and the like. Although gold and the rest be likewise sold by weight, yet they cannot be intended by the text, because a special law, limiting accumulation to twice the principal, opposes *that construction*.

Interest on grain trebles the debt (XLIV 2). Grain may be doubled at the time of harvest, that is, when new grain is gathered ; it may be doubled at that season, even within two or three months from the *date of the loan*. But, if not repaid at the season when new grain is gathered, it is trebled, and bears no further interest. “ So may wool, &c. ” wool and cotton bear the same interest with grain. “ Fibres of grass, ” or reeds, and grass and the rest, may be increased eight fold in one year. Such is the sense of the text (XLIV 2) The *Retnācara*.

From this gloss it follows, that interest on grain *only* trebles the debt. Consequently, VISHNU, YĀJNYAWALKYA, VAŚISHT’HA and HĀRĪTA, propound *the limit of interest on grain at three times the principal*. But this contradicts the accumulation stated

in the texts of many Sages, "three times, four times, and five times the principal."

On this point MISRA says, if the price of grain, after the crop is produced, have fallen below the price it bore at the time when it was lent before the harvest, the debt may be trebled; if the price be more reduced, quadrupled; if still more reduced, quintupled; but when the price has fallen very little, the debt is only doubled: and he expounds the text (XLIV 2) otherwise, as will be mentioned. According to this gloss, it appears, from the circumstances mentioned, "lent before the harvest, and repaid at the time of harvest," that the limits of interest are not stated in the text: consequently, when interest is received at the legal rate of an eightieth part and so forth, how far does accumulation extend? To this question there is no answer. If it be affirmed, according to this exposition, that interest doubling or trebling the debt is opposed to the rate of an eightieth and so forth, then it contradicts the *Retnācara*; for there interest is stated at two in the hundred and the like, and it is inconsistent with reason to admit a different rate of interest upon grain from that, which is prescribed for other articles. This and other objections may be suggested.

The author of the *Retnācara* reconciles the seeming inconsistency of such forms of interest, by distinctions relative to the good or bad qualities of the borrower, and the differences of time and place. SŪLAPĀNI holds, that the texts should be expounded according to the length or shortness of the period elapsed. In the *Vivāda Chintāmeni* several modes are stated.

The opinion, intimated in the *Retnācara*, is, that interest on grain doubling the debt at the time of harvest, similar interest on wool and cotton, and interest on reeds, grass and the rest, making the debt octuple in one year, concern debtors of mixed classes; for, stating the first text of HARĪTA (XXXIV and XLIV 1) as intending borrowers of mixed classes, the author cites the other text (XLIV 2), prefacing it with the word "so;" else, if it only concerned the limits of interest, it would be incongruous to cite it under that other title. Accordingly, in his gloss on the text of CATYĀYANA (LX), he expounds "produce of fruit" cotton and the like. But interest trebling the debt is stated as the limit of interest; for that coincides with the text of VĀSISHTHA (XLVI).

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It is said, interest on reeds, grass and the rest, makes the debt octuple at the close of one year; what is the accumulation on produce of *fields*, and on beasts of burden and the like? The answer is, when twice the principal is the limit of interest, there the order of classes is supposed: in other circumstances, the rate of interest on produce, on beasts of burden and the like, is different; and the rate assumed is that which is propounded by HARĪTA for reeds, grass and the rest; since it is a rule, that a construction of law, established in one case, is also applicable to other cases, unless there be a *sufficient* objection. As an accumulation raising the debt eight fold at the close of one year is declared to be the limit of interest on clarified butter and the rest, so five fold *is the limit* on produce, beasts of burden, and the rest. But, in fact, since there is no law to serve as authority for such an inference, the rate of an eightieth part, and so forth, on produce, *beasts of burden* and the rest, should be received from men of mixed classes, as well as from *Brāhmanas* and the rest. Such is the principle of the law.

But, in the case of *Brāhmanas* and the rest, three times, four times, and five times the principal (to be established according to the qualities of the debtor), at the same periods, in which interest may accumulate at the rate of an eightieth part and so forth, so as to double the principal which has been lent to men of mixed classes, and made payable at the time of harvest, fall under the description of stipulated interest, and are therefore immoral. Not being stipulated in a time of extreme distress, would it not be interest which need not be paid? It might be so; but it would be paid by the debtor, that he may be able to borrow again. Such is the principle of the law. In fact, having been settled by many former debtors, it must be *now* paid, though not stipulated in a time of extreme distress; as has been already mentioned. When the borrower himself fixes the rate of interest, then only is it required, *as a condition*, that it should be stipulated in a time of extreme distress.

But MISRA expounds the text of HARĪTA (XLIV 2), since "a year" may suggest other periods, such as fifty months and the like, if the principal *lent in kind* be alone considered, it may be doubled or trebled, or, as stated by other Sages, quadrupled or quintupled; the interest is regulated by the price. As an in-

stance of the variation of interest with the difference of price, he adduces the text of MENU (XXXIII); and he reads the text of HÁRÍTA (XLIV 2), grain may be doubled “if the principal alone be considered” (*mulé*), instead of grain may be doubled “at the time of harvest” (*tulé*).

On this some remark, that with all *debtors* grain is doubled at the time of harvest, that is, when new grain is gathered; by this special rule the rate of an eightieth part and so forth is barred: but interest for one or two months must be regulated by proportionate subdivisions; and the highest interest makes the debt three fold. Such is HÁRÍTA’s meaning; and the *apparent* contradiction to the texts of other Sages must be reconciled as before. “So wool and cotton;” interest on these also doubles the principal, and precludes the rate of an eightieth part and so forth. To the question, when *does the principal become doubled?* the Sage replies, “in one year.” He subjoins the limits of interest on grafs, reeds, and the like; “but grafs, &c. may be increased eight fold.”

That is not *accurate*; for men of the commercial class and the like would be liable to repay grain doubled at the time of harvest. Thus, were such the rule, a mercantile man, borrowing grain in the month of *Ashbâd’ha* to the quantity of a hundred thousand *prast’has*, for the purposes of commerce, would be subject to commercial loss by repaying twice the grain borrowed; which is contrary to reason. But there is no objection to the rule, so far as it concerns men of mixed classes not qualified for trade, although unable to subsist by other modes. To establish a different rate of interest on grain, wool and cotton, from that prescribed on all *other* articles, is contrary to reason. Accordingly this gloss is stated in the *Retnâcara* on the text of MENU (LXI); “any such debtor, who has borrowed grain or horses, valued at a hundred pieces of money, on interest at the rate of two in the hundred, &c.” At the time of harvest, grain, wool or cotton is doubled; at the expiration of a year, it is only trebled. By the particle “only,” the rate of an eightieth part and the like is prohibited. But grafs and the rest may be increased eight fold. Although the limits of interest, extending to four and five times the principal, might be reconciled in the same mode, by expounding the text as relating to debtors of mixed classes only, and

and by distinguishing moral and immoral exactions; yet, not having been stated by any author, this cannot be admitted.

It must, however, be examined how the limits can be regulated on the cheapness or dearness of grain. This difficulty is *thus* reconciled: since it is shewn by the particle “only,” in the text of HÁRĪTA (“or trebled only,” XLIV 2), that the natural limit of interest is the accumulation which trebles the principal; and since an accumulation raising the debt to four or five times the principal is subordinate thereto; a debt is quadrupled and quintupled in that period only which should *naturally* treble the debt; for, whatever were the value of the grain lent, three times that value is due at the period of repayment: if thrice the quantity of grain be *sufficient*, the grain is trebled; else it is quadrupled: should that also be insufficient, it is quintupled; but if this again be insufficient, MENU forbids any further demand (LXI). Even though three times the value could be liquidated with twice the quantity of grain in consequence of a great advance in price, double the quantity of grain should not be paid; for no law *authorizes this reduction*.

The qualities of the debtor should be understood of his adherence to his own regular mode of subsistence, his adherence to the modes of subsistence authorized in times of distress, his following the dictates of his own *perverse* will, and so forth. According to the gloss delivered in the *Dīpacalīcā*, the accumulation depends on the length or shortness of the period elapsed: if the period be sufficient to treble the debt, it is trebled; if the period, in which a debt is increased four fold, be complete, it is quadrupled; if the period be sufficient to make the debt quintuple, it is quintupled. To this very rule of adjustment the *Retnācara* alludes in suggesting distinctions according to the difference of time. Although there be no gloss of authors on the texts of Sages *fully explaining this adjustment*, inferences may be drawn by the wise, through a simple exertion of their own intellect.

A rule of adjustment may be formed on circumstances of *particular* distress affecting the debtor, or on the circumstance of general dearth. The *Mitācsharā*.

To this it may be objected, when are those limits of interest to be admitted according to this opinion? Whether all these modes, sanctioned by very learned authors, should be received,

or which should be selected, the wise themselves must determine.

The season of gathering new grain must be extended to wool. But, in fact, interest on grain doubling the principal at the time of harvest, appears to be merely stipulated interest; for it has been stated by CHANDÉSWARA when treating of stipulated interest. This has been already noticed. Accumulation of interest, raising the principal three fold, four fold, or five fold, which are in the nature of limits of interest, must be regulated on the difference of countries. In this province the rates of an eightieth part and so forth occur not in practice on loans of other things than silver coins and the like; but interest on grain and the rest, similar to the stipulated interest described by HÁRITA, occurs in practice. In such cases, when the debt has long remained *due*, thrice the value is sometimes, and in some places, adjudged by arbitrators. We think the text of NÁREDA (XLV), as expounded in the *Retnácara*, sufficient authority to maintain local usages.

Some think it a simple construction, that the creditor should receive his principal doubled, trebled, quadrupled, or quintupled, in the order of the classes, from *Bráhmanas* and the rest. This construction is almost *literally* stated in the *Viváda Chintámeni*. It would be vain to offer more numerous interpretations of the text. In respect of cloth, CÁTYÁYANA ordains that interest shall make the debt double; VRĪHASPATI, treble; YÁJNYAWALKYA, quadruple. The seeming contradiction should be reconciled, as in the case of grain.

LXVII.

VRĪHASPATI:—On pot-herbs the interest may make the debt quintuple; on feeds, and sugar-cane, sextuple; on salt, oil, and spirits, octuple:

2. So on molasses and honey, if the things lent have remained during a long period.

“Seeds;” seed of corn and the like: on that and on sugar-cane, *sextuple*. Interest may make the debt octuple, if the things lent have remained for a long period; that is, for such a period as duly increases the debt eight fold.

LXVIII.

LXVIII.

CÁTYÁYANA:—For all sorts of oil and spirituous liquors, for measures of clarified butter, for molasses and salt, the interest is held legal, though, *with the principal*, the debt be made octuple.

LXIX.

VRĪHASPATI:—For grass, wood, bricks, thread, and substances from which wine or spirits are extracted, for ~~leaves~~ bones, *ivory or shells*, and leather, for weapons, *common* flowers and fruits, no interest is ordained *without agreement*.

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“Substances, from which wine or spirits are extracted;” *alluding to* a substance from which an inebriating liquor is drawn, and which is commonly named *cut'h*. “Bones;” teeth, conchs and the like. “Leather;” the hide of the black antelope and the like. “Weapons;” arms. The apparent contradiction to the interest specially ordained on flowers and fruits is reconciled by supposing rare flowers and fruits in one instance, and common flowers and fruits in the other. To this gloss the *Retnâcara* subjoins the following text.

LXX.

VISHNU:—On substances from which wine or spirits are made, on cotton-thread, on leather, armour, weapons, bricks, or charcoal, which are not liable to loss, *the interest* may make the debt double.

There the mention of conchs supposes the countries in which they are common: and the same observation may be made on other substances. Since the text of VAŚISHT'HA (LXVI) propounds interest specially ordained and trebling the debt, whence arises an apparent contradiction, therefore the commentator, on the grounds of this text, holds, that interest accrues on rare fruits and flowers, such as nutmegs and cloves, which are meant in the

the rule of VISHNU ; but none on common fruits and flowers, which fall under the general description of “grafs, and the like.” On cotton, as in the text of CÁTYÁYANA (LX), interest makes the debt double ; but according to HÁRÍTA it may treble the debt : this is connected with the difference of borrowers ; or may be regulated on the commonness or rarity of the thing, and on the different sorts of cotton, in the same manner with *interest on grain, or in proportion to risk*. “Which are not liable to loss ;” on which, when lent, interest doubling the principal is not *probably* lost.

But MISRA, citing the text of VRĪHASPATI (LXIX), adds, “this is intended to forbid interest not agreed on, but interest *on these articles* may be promised through the exigency of affairs : accordingly CÁTYÁYANA and VAŚISHT’HA (LX and LXVI) propound interest doubling and trebling the debt.” It is thereby intimated, that on other articles, if it be not specially declared when the debt is contracted, either that it bears interest, or is free of interest, the creditor cannot afterwards receive interest.

BHAVADÉVA reads *tusha* bran or chaff, instead of *ishācā* bricks ; and instead of *cinwa*, a substance from which wine or spirits are extracted, he reads *ciīā*, which he explains dirt, meaning cow-dung and the like.

Here both opinions (MISRA’s and CHANDÉSWARA’s) seem right : thus, if interest have been promised on any thing, however common, it should be paid ; and interest on rare things, even though not expressly promised, should be paid, for they are similar to gems, *gold*, and the like. Both inductions are consistent with reason. Where interest accrues, because the articles are acknowledged scarce, on cloves, *fine* cauries, conchs, rhinoceros’ horn, stones of great virtue and price, vitreous substances and the like, the limits of interest must either be taken at three times the debt or the like, under the texts of VAŚISHT’HA and others (LXVI &c.), or at twice the debt, under the general texts of GÓTAMA and others (LIX &c.).

“Of interest on loans this is the universal and highest rule &c.” (XLV) ; this rate of an eightieth part and so forth is universal, for it is prescribed by the law. The *Retnācara*.

And the subject of limited interest is considered in codes of law. But the rate customary in the country may be different ;
that

that is, may be contrary to the universal rate. The Sage describes customary rates (XLV 2) ; “ country ” is there a mere instance, suggesting usage founded on seasons, on difference of class, and so forth. “ Double, treble, ” and the like, are mere examples ; more or less therefore are comprehended in the text. This text is accordingly cited as authority to prove special interest payable by debtors of mixed classes, as stated in the *Retnâcara*. In some provinces the principal is either repaid with interest amounting to half the principal, or is doubled, in others *the usual interest is different*.

If the borrower, being distressed, promised stipulated interest, when he received the loan, at six or seven in the hundred, his debt is doubled in a few days more than sixteen months ; after that period, does interest stop, or does it continue to the end of fifty months ? It is answered, since the law does not authorize more than double the principal, interest then ceases. Is it not solely when the rate of interest is the eightieth part of the principal, that the debt can be only doubled ; but when a higher rate of interest is settled, may not so much be taken as is the accumulation of interest in fifty months ; else stipulated interest and the like would not exceed the rate prescribed by law ? Interest on a debt secured by a pledge is declared to run six years and eight months, because the principal may be doubled in that time ; *on the above supposition*, a loan, for which neither pledge nor surety had been received, would also bear interest for the same period, and Sages would hold that it might be trebled or quadrupled : for what purpose then has it been declared, that interest ceases after fifty months. Consequently, no particular period is fixed for the cessation of interest, since fifty months and eighty months would be mutually contradictory : but on such and such substances lent, such and such accumulation of interest is limited. Thus the whole *law* is consistent.

Again ; if a debt have been contracted on a pledge given, and by the casual loss of the pledge the debt become unsecured by pledge or surety, in that case also interest should be taken so long as twice the principal have not been received by the creditor ; but, after that *has been received*, interest ceases. It is evident, that stipulated interest and the rest may exceed the interest allowed by law, if the debt be discharged, *in the case proposed*, within sixteen months.

ART.

ART. III.—*On Debts bearing no Interest.*

LXXI.

NĀREDA :—A commodity, the price of a commodity, wages, a deposit and *the like*, a fine to the king, a thing clandestinely taken *without a design to steal it*, a thing idly promised, and a stake played for, carry no interest *before demand* without a special agreement.

The text is read *panya mūlyam*, the price of a commodity sold ; but, a commodity purchased, and not received, falls under the description of a deposit. On the other reading, *panyam mūlyam*, the sense is, a commodity sold but not delivered, and the price of a commodity purchased but not received. Thus, if a thing sold happen to remain with the first owner, it carries no interest without a special agreement. “Wages ;” hire. “A deposit ;” a bailment. Interest after six months on the price of a commodity, and on a deposit not delivered after a demand (LVI), has been already declared ; therefore interest is only prohibited before a demand. More on this subject should be stated in the chapter on Deposits.

“A fine,” such as the highest amercement and the rest. “A thing clandestinely taken ;” obtained by fraud and the like.

The Retnācara.

For instance, one has received money from another, pretending that he will deliver him from some present or future danger of oppression by the prince ; but afterwards, the condition being broken, either by non-performance of his undertaking, or because the danger was merely pretended, and repayment of the money being therefore required, it need not be paid with interest. Again ; a hundred pieces of money have been extorted by some rogue, threatening a man of substance to accuse him of a crime before the prince or his kindred, unless he give him a hundred pieces of money ; in that case they must be received back without interest. Such cases are meant by the expression, “obtained by fraud or the like.”

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“A thing idly given or promised,” given on no religious consideration, and not delivered. From the term “idly” it appears to be the Sage’s meaning, that, if a gift made on a religious account be not forthwith delivered, interest ought to be paid at the rate prescribed by law: since it is declared by a text cited in the *Malamāsa tatwa* to be a theft, when gold, *given but* not delivered, is lost. If it be lost through *slight* negligence, so much only *as its value* must *the giver* make good; but, if gold, *given but* not delivered, be lost and *not made good*, the giver would be guilty of theft. By parity of reasoning, if it be not lost, it must bear interest *so long as it is withheld*. It should not be objected, that this concerns gold alone. The theft is not denied in the case of other articles; or, supposing it to concern gold alone, the term “idly” must likewise except the case of gold only. However, interest is not now paid, any more than on amicable loans.

Some man of substance, in a time of distress, or when going to a foreign country, distributes his property; for instance, *he assigns* certain hundred *suvernas* to his spiritual preceptor, *consecrates* eighty *suvernas* to a certain deity, *assigns* sixty *suvernas* to a certain priest, thirty *suvernas* to a certain dancer, five *suvernas* to a courtesan formerly enjoyed, and distributes the remainder of his property in due shares *according to the law of succession*: but, from the pressure of affairs, the sums given away have not been delivered. In that case, when he happens to be relieved from that distress, or when he returns from abroad, and interest is proposed on those gifts as debts demandable on his aggregate wealth, the sums given on religious considerations must be delivered with interest, but the principal only of the sums given to dancers and the like should be paid. This also some lawyers hold *to be intended by the text*.

“A stake played for;” money won in gaming. “Without a special agreement;” not expressly declared by both parties to bear interest. “Carry no interest;” do not bear interest.

Some person, having sold a thing, tells the purchaser, “Let this your property be a loan to me; I will pay interest for it.” Or an indigent person, employing a servant on necessary work, but unable to pay his wages, tells him, “I will borrow money elsewhere and pay thy wages; or let them be *forborne*, and I will pay thy wages with interest.” In such cases of positive agreement, there may be interest promised on a commodity sold, on

wages and the rest : and then only is interest due. But, if there be no such agreement for interest, this text is intended to forbid interest in that case.

1st, If any thing be given by some person to another as a loan, as a complimentary present and the like, or as a gift on a religious consideration, and by reason of the donee's absence it be committed to another, and long after received by the donee, it seems to be similar to a deposit : does, or does it not bear interest while remaining in the hands of the intermediate person ? This is one doubt *which may be proposed*. 2dly, *In the case of sale without ownership*, the buyer is justified by producing the seller, and the owner recovers his property (Book II. Chap. ii. V. 29) : when the owner recovers his property after the lapse of a long period, must, or must not, interest be paid ? This is a second doubt *which might be proposed*. 3dly, Some money has been obtained for the king or his officer, from some person accused of a crime ; afterwards, the accusation being disproved, the money must be refunded by the king or his officer ; or if it be true in forensick practice, that it should be made good by the accuser, must, or must not, interest be paid thereon ? This is a third doubt *which might be proposed*.

On the first doubt,

LXXII.

SAMVERTA :—There shall be no interest on the property of women *lent amicably by them to their kinsmen*, nor on interest itself, nor on a deposit, *nor on any thing so committed in trust*, nor on a sum which is dubious or *unliquidated*, nor on a sum due by a surety, unless it be mutually stipulated.

“Committed ;” placed with an intermediate person.

SÚLAPÁNI in the *Dípacalica*,

This text is found in the treatise of YÁJNYAWALCYA, but its insertion there is not approved by SÚLAPÁNI and others.

“On a deposit so committed ;” or *so remaining with the depositary* : not detained after a demand. The *Retnácara*.

Thus a thing committed to an intermediate person is merely a sort of deposit: and “committed” is an epithet of deposit; else the circumstance of its not being detained after a demand would be unmeaning, since interest is not ordained on a thing committed *in trust*, after the lapse of six months: but even on a thing so committed, and not restored on demand, interest accrues after a demand at the expiration of six months. But if the word deposit be there taken in a general sense, it is proper to do the same also in the present instance (*that is, allow interest after the lapse of six months if the thing have been demanded*).

But how can interest be allowed in that case after the lapse of six months, according to the interpretation of *SÚLAPÁNI*? It is answered, the word “and” in the text of *CÁTYÁYANA* (LVI 2) connects *the sentence* with what is not mentioned. More on this subject we shall deliver in the chapter on Deposits.

“On the property of women,” as described of six sorts: *on such property* taken by their *husbands or other* protectors, there shall be no interest. The *Retnácara*.

Here “protector” is a general term comprehending sons and the rest. *CÁTYÁYANA* propounds a distinction.

LXXIII.

CÁTYÁYANA:—Neither the husband, nor the son, nor the father, nor the brothers, have power to use or to aliene the legal property of women.

2. If any one of them shall consume the property of a woman against her consent, he shall be compelled to pay *its value with interest to her*, and shall also pay a fine to the king.

3. But, if he consume it with her assent, after an amicable transaction, he shall pay the principal only, when he has wealth *enough* to restore it *.

By the expression “against her consent,” or forcibly, unamicable transactions *are* suggested: consequently, should he consume her

* Book V. Chap. ix.

her property not amicably lent to him, interest must necessarily be paid; but there is no interest on the property of a woman amicably lent *to a kinsman*. The text of SAMVERTA must be applied to that case only. From the term "protector" used in the *Retnâcara*, it appears that interest must only be paid by others than her husband, her son, her father, or her brother. For in the third verse of CATYÂYANA an agent must be sought for the act of consuming her property after an amicable transaction, and that agent occurs in the preceding verse (LXXIII 2), "any one of them." A daughter, a mother, and a sister are entitled to borrow the several property of a woman on amicable terms, without interest; for the affinity is the same, the *considerations of duty* the same, and natural affection the same. But interest must be paid by the husband's father or mother. Yet, what objection there could be to place the father-in-law and the rest on the same footing with a brother, must be determined by the wife.

On this subject some affirm, that the phrase "neither the father nor the brother" intends the father's lineage generally; "neither the husband nor the son" intends the husband's lineage generally: and the same should be argued in respect of the mother's family. When it has been expressly declared by the woman, at the time the loan was made, that no interest should be paid, in that case none need be paid by any person. The phrase "when he has wealth *enough* to restore it" intimates, that the property of a woman borrowed by a kinsman involved in distress, must only be paid when he is relieved from distress.

The term "property of women," in the text of SAMVERTA above cited (LXXII), has been already expounded. *He proceeds*, "nor on interest:" here also the circumstance supposed in the case of a deposit must be understood, "not detained after a demand;" for it is declared, that the balance of interest bears interest (LVI 2). But *this can only be claimed* after the principal has been discharged. Accordingly BHAVADÉVA says, "the balance of interest on a sum paid."

In the second doubt proposed, is it questioned whether interest shall be paid for so long a period as the thing remained in the thief's possession, with or without the knowledge of the owner, before it was adjudged; or whether it shall be paid for the pe-
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riod during which the thing remains unreturned through the wiles of the thief, after the owner's property has been adjudged in a judicial proceeding or the like? As to the first supposition, it is provided in the text of SAMVERTA (LXXII), "nor *any interest* on a sum which is dubious or unliquidated, nor on a sum due by a surety, unless it be mutually stipulated."

"A sum which is dubious or unliquidated;" of which it was first questioned whether it were due or not: *on such a sum*, even though subsequently adjudged to be due, there is no interest.

The *Retnâcara*.

But if it be adjudged to have been originally not due, of course there can be no interest; *for the greater includes the less*, as the staff is impure if it can defile the bread.

In fact, the construction of the text (Book II. Chap. ii. V. 29) gives this *sense*, "the buyer is justified by producing the seller, and the owner recovers his property by the production of the seller." Before the seller or thief be produced, the owner's property is not revived. Accordingly RAGHUNANDANA, in the *Prâyaschitta tatwa*, says, "the owner of property lost." If his property subsisted at that time also, the gloss, "owner of lost property," would be irrelevant. If a stolen bull be sold to a YAVANA, and castrated by him, or the like, expiation must be performed *by the owner*, on account of some negligence *which gave opportunity for the robbery*.

The production of the seller is proof which justifies the buyer by establishing the sale; the owner recovers his property by the detection of the theft. Thus the buyer is justified by producing the seller for proof of the sale; and the owner recovers his property by proof of the theft. Hence the owner has not *actual* property, even while the cause is pending. Or if the text be explained, "from him by whom the thing was sold, the owner recovers his property, the king receives a fine, and the buyer receives the price," still the owner's property is only revived on the restoration of the thing by the thief or other person; and it is only restored after the judicial proceeding. Accordingly it is declared by a text of the *Vishnu dhermôttera* (Book II. Chap. ii. V. 32), that theft creates property: hence, if such property be lent, the robber may receive interest; and some benefit may arise from such *stolen* goods applied to religious uses.

VÁCHESPATI BHATTÁCHÁRYA admits the robber's property in stolen goods. According to his opinion, the import of SAM-VERTA's expression, "what is dubious," is thus stated: a man requested by another to give him a silver coin, and thinking that he asks it as a loan, gives the money by way of loan; but he who receives it entertains a doubt, "I have done him a benefit; he is a friend, and is rich; does he give me this money for consumption, or does he lend it to me?" The matter being afterwards contested, interest, even though it be adjudged to be payable, need not be paid for the period preceding that *adjudication*.

Some hold, that, by saying "the owner recovers his property," his ownership is fully established. The gloss, "owner of lost property," is intended to indicate the former owner, as a solution of the doubt, whether ownership was then vested in the buyer, or in the former owner: it signifies him whose property was missing; who did not exactly know where his chattel was. If a stolen bull be castrated, or the like, the owner must perform penance to expiate his want of sufficient care. Accordingly in the *Prāyascitta Vivēca*, after describing as theft the act of one who resolves to dispose at his pleasure of what he well knows to be the property of another, 'SÚNAPÁNI says, a robber has not property in stolen goods. Hence a sale made by him, being a sale without ownership, is invalid; and YÁJNYAWALCYA's expression, "the owner recovers his property," is accurate.

On the second case of the second doubt (*does it bear interest after adjudication?*) it is said, there can be no opportunity for fraudulent detention, since the king immediately compels restoration of the chattel. But if a long period elapse in consequence of inability to enforce the demand or the like, then, since the man is guilty of an offence, and the case is not specified under the title of Prohibited Interest, therefore interest must be paid; and since no particular period is directed under the head of Interest without a special Agreement, it is proper that interest should commence from the date of the demand. This might be further discussed under the title of Theft.

"Nor any interest on a sum due by a surety" (LXXII); *literally for suretiship*: the act of a surety is suretiship, as the act of a thief is theft: and that *act of a surety is an undertaking for*

the payment of a debt. Thus, if a debtor die, or be reduced to the utmost poverty, the debt, with the interest *which has accrued*, must be paid by the surety. In that case the whole amount of principal and interest due by the *original* debtor is the same with the principal due by the surety; for he cannot be solely liable for the original debt. The text of SAMVERTA resolves the doubt, whether the surety must give further interest if he delay payment.

LXXIV.

CÁTYÁYANA:—No interest is ever *due* on leather, on *straw* or produce, on the intoxicating liquor called *ásava*, on a stake played for, on the price of commodities, on a woman's fee, nor on what is due on account of suretiship.

“On leather” interest is only forbidden without a special agreement; or on common leather; for the rule of VISHNU (LXX) ordains interest on leather, making the debt double. “Straw or produce” (*sasya*); the stems of corn. In respect to this also the rule is similar. “The intoxicating liquor called *ásava*,” a particular sort of wine. Interest on *ásava* or spirituous liquors has been propounded by CÁTYÁYANA and VRIHASPATI (LXVIII and LXVII): although this might be restricted to other kinds of inebriating liquors except *ásava*, yet as the word “all” in the text of CÁTYÁYANA (LXVIII) must be extended to spirituous liquors, interest on all sorts of inebriating liquors, *ásava* and the rest, is *thereby* suggested. Hence the adjustment must be the same as in the case of leather.

“A woman's fee;” a nuptial gift payable on an *Asura* marriage, and so forth: a gratuity payable to a courtesan or the like, falls under the description of things given on a false or immoral consideration, as stated by NÁREDA (LXXI). “What is due on account of suretiship;” what is become due from a bondsman on account of his suretiship.

It is here implied, that no interest is due on leather and the rest, without a special agreement. The *Retnácara*.

The use of this reservation, “without a special agreement,”

has been explained in respect of leather, straw or produce, and *āsava*. In respect of a stake played for, the price of a commodity, and a woman's fee, it is founded on the coincidence of the text of NÁREDA (LXXI); and in respect of what is due on account of suretiship, on its coincidence with the text of SAMVERTA (LXXII), "nor *any interest* on a sum due by a surety, unless it be mutually stipulated." Here the inferible sense is, that common leather and the rest, on which interest had not been stipulated, do not, like deposits and the rest, carry interest, even though withheld after a demand.

CÁTYÁYANA and SAMVERTA (LXXIV and LXXII) prohibit interest generally on a sum due by a surety; if a debtor die, his surety being therefore liable for payment, would he not be liable for the payment of the principal only without interest? On this objection VYÁSA propounds a rule concerning interest upon the original sum lent.

LXXV.

VYÁSA :—A sum, for which a man is *merely* a surety, a sum secured by a pledge *to be kept only yet* used, a debt not received from a debtor tendering it, part of a loan remaining in the hands of the creditor, a fine imposed, a nuptial gift, and a sum *only* promised, carry no interest.

On a sum for which a man is merely a surety he shall pay interest only to the amount of double the principal: it is not again doubled while due by the surety. MISRA.

A sum secured by a pledge to be kept only yet used, bears no interest; for in the case of using a pledge which may be used, the use of the pledge is interest; and in the case of the unauthorized use of a pledge liable to be used, half the interest only is forfeited, as will be shown. It is accordingly declared by YÁJNYAWALCYA, "there shall be no interest if a pledge for custody only be used" (LXXXIV.)

"A debt not received *by the creditor* from a debtor tendering it ;"

it ;” thus a debtor offers payment within two or three months after the receipt of the loan, but the creditor refuses to accept payment ; in such a case the sum bears no further interest.

LXXVI.

YÁJNYAWALCYA :—Property lent, which the creditor will not receive back, when tendered, must be deposited with a third person, and bears no interest afterwards.

A sum tendered by the debtor, which the creditor will not receive, bears no interest afterwards, provided it be deposited with a third person. The *Dīpacalīcā*.

Consequently, if the debtor wishes to pay no further interest, he must place in the hands of a third person the debt tendered by him and refused by the creditor : unless it be so deposited with a third person, it carries interest. Accordingly CHANDÉSWARA cites the text of YÁJNYAWALCYA with this remark, “a debt not received from a debtor tendering it carries no interest : on this subject the Sage declares a *provisional* condition :” here the condition is, that the sum be deposited with a third person. In the text of VYÁSA also (LXXV), concerning a debt not received from a debtor tendering it, a bailment to a third person must be understood ; for it has the same import with the text of VÁJNYAWALCYA.

LXXVII.

VISHNU :—Property lent bears no further interest after it has been tendered, but refused by the creditor.

Here also the condition, that it be deposited with a third person, should be understood ; and it must be admitted by the followers of CHANDÉSWARA, that this concerns a debt contracted for no specifick period ; else the limitation, “let no lender receive interest beyond the year” (XLI), would be irrelevant to the

cases supposed by CHANDÉSWARA. It should not be affirmed, that the text may be thus applied, "receiving the principal within the period, let him take interest to the end of the period stipulated." If no interest be received even though the debt remain, it is an ill construction that interest can be received when no debt is due. According to other opinions, the same rule should be understood even in the case of a loan for a specifick period. A distinction, however, will be mentioned in respect of loans for a specifick period secured by a pledge.

"Part of a loan remaining in the hands of the creditor" (LXXV); the term is expounded in the *Retnācara*, what is under the influence of the creditor. This gloss may also be explained in the form of apposition called *bahubrihi*; that of which the creditor is influenced. A creditor is influenced by the humble solicitations of the debtor; thus, if a creditor, influenced by great submission and the like, say, "henceforward I will exact no interest," then the debt carries no interest. It is the same if the apposition be in the form called *tatpuruṣha*.

"A fine" (LXXV): a *mulct*, such as the highest amercement and the rest. Although paid after long delay, it carries no interest.

"A nuptial gift" (LXXV) which is promised, or undertaken to be paid. The *Retnācara*.

The commentator considers "promised" as an epithet of "nuptial gift."

"A nuptial gift;" money due on account of marriage. "A sum promised;" undertaken to be paid: and this concerns a thing given on a false or immoral consideration, for it is easy to suppose the same grounds for this and for the text of NÁREDA, which has that import (LXXI). The *Chintāmeni*.

The commentator considers "promised" as an independent term. Ultimately there is no difference; for, since the donee has no property in a thing promised, there can be no interest. But it may be questioned, why it is said in the *Chintāmeni*, "this concerns a thing given on a false or immoral consideration." In the gloss of the *Retnācara* also "nuptial gift" assumed as the subject, of which "promised" is the epithet, is liable to objections; for in other cases of things only promised there is no interest. Some expound the text, "a nuptial gift and a sum only promised bear

bear no interest." Promised; that is, promised to be given. It should not be affirmed, that a sum promised as a gift on some religious consideration, must be paid with interest. It could only be right to affirm it, if there were an express law of such import.

VISHNU also declares exemption from interest, if a pledge be used.

LXXVIII.

VISHNU :—By the use of a pledge *to be kept only*, the interest is forfeited.

"By the use of a pledge;" by the use of a pledge to be kept only. The *Retnâcara*.

By the use of a pledge to be kept only, such as a copper caldron and the like. If a pledge for custody only be used a single day, must interest be paid or not? The answer to this question is, it does not follow from the text, that interest need not be paid, if the pledge be used even a single day; for that would be inconsistent with reason: and there is no difficulty in explaining the text, "by such use of a pledge as is equivalent to the whole interest." Consequently the proportion of interest should be settled after deducting a sum equivalent to the use of the pledge. This answer may be given.

Such being the case, if the use of the pledge be more *than equal to the principal and interest*, would not the principal be forfeited? It may be so: and YÁJNYAWALCYA accordingly says, "the pledge must be released on the double sum being paid, or having been received from the use of a pledge" (XLVI). Else, since VISHNU propounds the forfeiture of interest only by the use of a pledge, the principal must be paid. With so much as has been received, according to the value settled by arbitrators for the hire of the pledge, such as the price of milk or the like, or the waste of copper vessels, and so forth, the interest is in the first instance discharged; if there be an excess, it is applicable to the liquidation of the principal. This form of adjustment should be observed in the present case.

The moderns so expound the law. But the *Mitâcshará* states, that

that by the use of a pledge, however inconsiderable, interest is forfeited, however great, because the pledgee has violated the terms of the agreement. The question on the difference of these two opinions must be determined according to reason.

Some money has been intrusted by one man to another, and is delivered by the depositary, with or without the consent of the owner, to another person, by way of loan: in that case, to whom does interest accrue; to the depositary, or to the owner? This question will be discussed in the chapter on Deposits; but it may be here examined, what is the rule when the depositary himself uses the money as a loan.

Is it used as a loan with, or without, the assent of the owner? If used without his assent, was it done on the presumption of assent, or without such presumption? The first case occurs in the following instance: a thing was first deposited with some person; afterwards the depositary, needing a loan for the support of his family, asks the loan of the depositor. In that case, the loan authorized by him is alone valid; for, in comparison with a loan, a bailment, consisting in *an agreement for custody only*, is a weaker contract. This may be explained when examining the comparative force of civil contracts. Hence (*since the loan prevails over the deposit*) the principal must be repaid with interest, unless there be a special agreement to exempt it from interest. The second case occurs when such a depositary needing a loan, and confidently presuming on the tacit assent of the owner, either on account of his indolence, or his remote absence, publicly executes a written contract of debt, and expends the money. This also becomes a debt, but *secondary only*; for it is not delivered *as a loan* by the owner: if the first method can be observed, the last should not be practised. In the present case, the principal must also be repaid with interest: if the owner of his own accord relinquish interest, then only can the principal be repaid without interest.

The form of repayment in either case is this; what became a debt with the assent of the owner, must be repaid to the owner himself, and interest must be paid for the intermediate period. If the owner again make it a deposit, then only does it become a deposit. But if the owner, when assenting to the loan, said, "when you receive money, discharge the debt, and keep the money

money in your possession ; my consent is not requisite :” in that case, the borrower should publicly execute a written declaration of payment, with an acknowledgment of his holding the sum as a deposit, and lodge the money in a place of safety : from that moment interest stops.

But, in the case of tacit assent, such assent is also presumed when the debt is paid. This is founded on the less degree of confidence in the former case, and the greater degree of confidence in the last case. If the depositary said, when the deposit was made, “ I shall sometimes use this as a loan, sometimes lend it to persons who may ask a loan, sometimes keep it :” in that case, whatever the owner may have authorized, such only must be the proceeding of *the depositary* ; for, if the owner said, “ it must only be lent and repaid with my knowledge,” in that case it can only be repaid with his assent ; and interest must be paid until that assent be given. But if he said, “ the loan may be advanced and repaid according to your judgment of what is right ; there is no occasion for my *special* consent :” in this case, the depositary may, of his own authority, discharge the debt, or receive payment from another person, to whom the money has been lent. In the interval between the payment of one debt, and the contract for another, interest is suspended : should the proprietor subsequently claim interest until he consented to repayment, he shall not obtain it. If the owner said, “ it must not be lent, nor otherwise employed,” the depositary is guilty of an offence if he use it as a loan. Should he do so in breach of such an injunction, then interest at legal rates, to which the depositary has tacitly assented, must be paid, until the owner consent to repayment.

The third case occurs, when a depositary expends the money, unknown to the proprietor, and executes no writing declaratory of debt. This is an offence, and should be discussed under the title of Theft. Although there be no text of any Sage, nor commentary of any Author, on this subject, it appears so from the reason of the thing. Thus,

VRĪHASPATI *, cited in the *Vyavahāra tātva* :—A decision must not be made solely by having recourse

* Book II. Ch. iv. V. 17.

course to the letter of written codes ; since, if no decision were made according to the reason of the law, or according to immemorial usage (for the word *yuṭti* admits both senses), there might be a failure of justice.

Yuṭti; ratiocination.

RAGHUNANDANA.

LXXIX.

GÓTAMA :—A loan secured by a pledge, *to be kept only, yet used*, bears no interest, nor money tendered, nor a sum, *of which part is undelivered by the lender, or of which he disturbs the possession*.

“ Money tendered ;” the term may signify a debtor willing to pay the debt. “ Of which he disturbs the possession ;” the pledge for which *debt* he attaches in the hands of the creditor. In such a case the loan carries no interest. For example, a debtor is willing to pay the debt, but the creditor refuses to accept payment ; the debtor deposits the sum with a third person, and attaches the pledge : in this case the loan bears no interest ; because he has attached the pledge, interest ceases : but if he attach a pledge which is liable to be used, without tendering the debt, interest must be paid ; and not, if he tendered the debt. The text of GÓTAMA suggests this distinction *.

Some explain the text, when the king, on the application of some creditor of that creditor, attaches the debt in the hands of the debtor, and makes it as it were a deposit in his hands, no interest shall in that case be paid. Others say the meaning is, when the person of the debtor is attached by the creditor to enforce payment of the debt ; when he is restrained from going where he lists ; when he is confined in prison, and so forth, as stated in texts which will be quoted : in such cases the debt carries no interest during the period of restraint.

A

* A subsequent gloss, more consistent with the literal sense of the text, is followed in the translation.

A loan secured by a pledge to be kept only, yet used, bears no interest. By one who has tendered the money, no interest is payable. By a debtor who is disturbed in the use of the loan received, no interest shall be paid from the time of disturbance.

The *Retnâcara*.

No interest is payable, provided the sum be deposited with a third person; this must be supplied, for it coincides with the text of YĀJNYAWALKYA.

“He states another case:” that is, when a creditor has granted a loan of a hundred *suvernas* deposited in the hands of a banker, and the whole sum has not been taken by the debtor, but a few *suvernas* only, and the remainder left with the same banker; afterwards, the creditor discovering his insolvency, and apprehending that the debt would not be discharged, attaches the money in the banker’s hands. In such a case, the whole sum carries interest until the attachment; but after the attachment, so much only as has been received, and not the whole sum. Or the other case alluded to may be, when money deposited sometimes becomes a loan in the mode above-mentioned, and the creditor in such a case attaches the deposit, and insists on immediate payment. Again, a man has lent a horse or the like to be used for burden; after two or three months the creditor, through other persons, forbids the use of the cattle: it happens that the horse, or other beast, is only restored two months afterwards. In such a case, interest must be paid until the use of the cattle was forbidden, but not later; and no hire shall be paid for the horse, since he was originally received as a loan. Such is the opinion intimated in the *Retnâcara*. According to the gloss of MISRA, “a loan bears no interest, if it be attached, withheld, or the like.”

Of these interpretations one may be considered as the true sense of the text, and the rest as founded on the reason of the law. Or all may be considered as intended by the text, expounding it equivocally. But, at all events, the several inductions must be admitted.

CHAP.

CHAP. III.

ON

PLEDGES, HYPOTHECATION,

AND

MORTGAGES.

SECT. I.—*On the nature of a Pledge, and on Pledges lost or damaged.*

LXXX.

VRĪHASPATI :—A pledge (*ādhi*) is called *bandha*, and is declared to be divisible into four *pairs* :

2. Moveable, or *personal*, and fixed, or *real*; for custody only, and for use; unlimited, and limited as to time; with a written contract, and with a verbal attested agreement.

Bandha is derived in the passive form, “that which is bound or pledged (*badhyatè*).” A male slave, or the like, being bound or confined, is then unable to perform service for his master; a horse also, being bound or tied, is then unfit for his owner’s use. By acceptation, the sense of the word “*bandha*” is a thing remaining in the creditor’s possession by an agreement on the part of the debtor, in this form, “this *chattel* shall remain in thy possession

session so long as I do not repay thy money." Accordingly it is said by eminent logicians, *that the meaning of words is apprehended by grammar, by analogy, by dictionaries, by original instruction, and by practice or acceptation.*

Adhi is the very same thing with *bandha*. It is divisible into four pairs; it is of four kinds or forms, *which are again subdivided*. Those forms are the properties of a pledge, considered by the author of the *Calpateru* as connected with the nature of the thing pledged, the form of hypothecation, its period, and the evidence of the transaction. Of how many sorts again are each of these properties of a pledge? The Sage, satisfying that question, enumerates them; "moveable, &c." (LXXX 2). Consequently, in regard to its nature, a pledge is of two sorts; moveable, as kine, horses, or the like; and fixed, as land, or the like.

Having explained the *distinctions on the nature of the pledge*, the Sage notices the form; "for custody only, and for use;" for custody, or safe-guard, and for use, or employment. These two direct the properest (*pracrishta*) conduct of the creditor, and hence are called the forms (*pracara*) of a pledge: and thus, in respect of form, a pledge is of two kinds. "A pledge for custody only;" to be merely kept: a thing which may be injured by use, or one which cannot be used. That which is not *probably* injured by use, is a pledge "for use:" as will be explained further on.

The Sage subjoins *the distinctions* respecting the period of the pledge; "unlimited and limited." "Unlimited;" *literally* subject to redemption at pleasure; that is, to be released at no specifick time. "Limited;" to be released at a specifick time. "On payment of the principal at such a time, this pledge shall be released;" in this and similar forms a period is specified. Thus the distinction in respect of time is also two-fold.

The Sage notices the evidence of a pledge: "with a written contract, and with a verbal attested agreement." If it be questioned, whether "this horse be pledged to that man or not," the evidence may be a writing or a witness. Thus evidence is also two-fold. Hence the distinctions are eight-fold, as is observed by CHANDÉSWARA.

Being divided into four pairs, moveable or fixed, and so forth,
it

it is of four kinds : four-fold, distinguished according to the nature of the thing *pledged*, the form of *hypothecation*, its period, and the evidence of the transaction ; and eight-fold, by the subdivision of these.

The author of the *Calpateru*. Moveable and fixed compose the first pair relative to the nature of the thing *pledged*; for custody only, and for use, the second pair relative to the form of *hypothecation* ; unlimited, and limited *as to time*, the third pair relative to the period of *the mortgage* ; with a written contract, and with a verbal attested agreement, the fourth pair relative to the evidence of *the transaction*. By the subdivision of these, by their mutual differences, by the relative distinctions of moveable and fixed, and so forth, the subject becomes eight-fold : consequently, each of the four sorts contains two species.

The enjoyment of the pledge, and the debtor *himself*, and so forth, are secondary evidence of hypothecation proved by enjoyment, or made by the party himself *without writing or attestation*. They are not consequently exclusive of this subdivision. Or these are the distinctions of pledge, as approved by law. But a pledge unauthenticated by attestation or written contract, or authenticated by an attested writing not being noticed in codes of law, is not approved by *positive law*. Such is the interpretation according to CHANDESWARA.

Or a pledge, whether moveable or immoveable, is of four sorts ; to be merely kept, to be used, redeemable at pleasure, or at a specified time. This four-fold distinction of *pledges* concerns moveable *property*, and *also concerns fixed property*. A pledge is sometimes authenticated by a written contract, sometimes by a verbal attested agreement. Such may be the construction of *the text*. This is stated generally : sometimes also a pledge is proved by enjoyment, or has been delivered with a verbal unattested agreement.

LXXXI.

NĀREDA :—That, to which a *secondary* title is given (*adhicriyaté*), is (*ádhi*) a pledge.

2. It has two forms, to be released at a fixed time,
or

or to be retained until payment be tendered. It is again declared to be of two sorts, for custody only, and for use.

3. Even so must it be diligently kept: on its loss or destruction by the negligence of the lender, the interest *on his loan* is forfeited; and even if it be only spoiled or altered.

It has two characters or forms. *One*, to be released, or given up, at the period which has been fixed or settled. For example: *the pledger says*, “a loan has been received from you on the mortgage of this land; when twice the amount of the debt has been realized, you must surrender the mortgage.” Or *he says*, “a loan is now received by me, and a pledge is given; paying the debt at the close of the year, I will redeem the pledge, else this pledge shall become your absolute property.” When a time has been settled in these or other forms, the pledge is “to be released at a fixed time.” This has been named, by VRĪHASPATI, a pledge “limited as to time,”

The sense of the *other* phrase completed is, “until the time of payment *tendered*,” until payment be tendered. In the case of an agreement in this form, “whenever the debt shall be discharged, then only shall the pledge be released,” it is a pledge for no specific period; and this is named by VRĪHASPATI a pledge “unlimited as to time,” or redeemable at pleasure; for the payment of the debt and surrendry of the pledge depend on the will of the party.

“It is again declared to be of two sorts” (LXXXI 2); the two kinds being subdivided, the distinction is four fold. But CHANDÉSWARA thus expounds “two forms” (LXXXI 1); a pledge, whether fixed or moveable, is unlimited or limited as to time, a distinction described by the phrase “to be released at a fixed time, or to be retained until payment be tendered;” and it is for custody only, or for use: these are the two distinctions. It must also be understood, that it may be authenticated by a written contract, or by a verbal attested agreement.

Thus the texts of VRĪHASPATI and NÁREDA coincide. According to this interpretation, it is proper to expound the phrase “it

“it is again of two sorts,” with a written contract or with an attested verbal agreement. Here the text of NĀREDA is expounded in conformity with the text of VRĪHASPATI; or the text of VRĪHASPATI may be expounded in conformity with the text of NĀREDA. Ultimately there is no difference.

“That to which a title is given” (LXXXI 1); that which is made similar to his own absolute property. In this instance there is only a secondary title, consisting in the custody or occupation of another’s property. As that to which a man is entitled is kept or used like his own property, so is a thing received in the form of a pledge, though it actually belong to another: and the word *ādhi* acquires the same meaning with *bandha* from practice and use. Or the derivation of the word *ādhi* may be, that in right of which (*adhicritya*) a loan is made or the like. It may be any-how understood by supposing the intervention of some term, as in the epithet fawn-waisted, where the term expressive of similarity is dropped.

“Even so must it be kept” or preserved (LXXXI 3); according to the difference in the forms of pledges. In such form as such things are kept, must the pledge be kept. Or, it must be kept in the mode of custody, to which the debtor assented. “On its loss or destruction,” in case of its not being preserved, interest is forfeited by the negligence of the lender. Such is the meaning of the text. If the pledge “be spoiled or altered,” if it be broken or the like, the consequence is the same; interest is forfeited as in the case of loss or destruction. In this interpretation CHANDÉSWARA concurs.

LXXXII.

VISHNU:—By the use of a pledge *to be kept only*, the interest is forfeited; and the creditor shall make good the loss of a pledge, unless it was caused by the act of God or the king, *and without his fault*.

“By the use of a pledge;” already expounded by the use of a pledge *to be kept only**.

If

* Gloss on V. lxxviii.

If the loss of the pledge be caused by the act of GOD, or of the king, without any fault on the part of the creditor, his recovery of the principal and interest will be propounded. For example; when a horse or ox is pledged, and dies of disease notwithstanding the best medicaments administered, or is forcibly seized by the king, though guarded with the utmost diligence, the loss is caused by the act of GOD, or of the king. But the creditor must make good a pledge lost without such *inevitable necessity*; either by payment of its value *in money*, or by delivery of an equivalent *in kind*. But in the case of his not making good the pledge, NÁREDA ordains the forfeiture of the principal (LXXXIII). Such is the gloss delivered in the *Retnâcara*.

LXXXIII.

NÁREDA:—If a pledge be lost, *and the creditor do not replace it*, the principal itself shall be forfeited; unless the loss was caused *without his fault*, by the act of GOD, or of the king.

This case of a pledge not made good must be understood where the pledge is not replaced by an equivalent, and is equal in value to the amount of the principal *debt* together with interest. It is also proper to apply *the same rule* when the creditor, in consequence of his actual poverty, is unable to pay the excess of value, or when the value of the thing cannot be ascertained.

The forfeiture of the principal, implies the forfeiture of interest as well as principal. It would be inconsistent with reason that the principal should be forfeited, and the interest remain due.

LXXXIV.

YÁJNYAWALKYA:—If a pledge for custody only be used, there shall be no interest; nor, if a pledge for use be damaged: a pledge spoiled, *lost*, or destroyed, unless by the act of GOD or of the king, shall be made good *by the creditor* *.

VOL. I.

L

“ Spoiled

* The last hemistich only is cited in this place; the verse at large is cited after V. 91. I place it here, because reference is made to it before the latter citation.

“ Spoiled *or lost* ; ” broken, stolen or the like, and become utterly unfit for use. “ Destroyed ; ” annihilated, or totally lost. Both these pledges must be made good by payment of the value, or otherwise. The *Retnâcara*.

Consequently the term “ destroyed ” signifies dead, burnt, or the like. It may be questioned how “ stolen ” can be suggested by the word lost *or spoiled* ? If a thing stolen be recovered, it is not lost ; if it be not recovered, it is *totally lost, or similar to a thing destroyed* ; but the *intermediate* possibility of recovery does not justify the consequence.

The text of NÂREDA (LXXXI 3), as expounded by CHANDÊSWARA, “ on the loss or destruction of the pledge interest is forfeited, ” is inconsistent with these texts. It should not be affirmed, that, under the authority of both texts, the forfeiture of interest, and satisfaction for the pledge, are both ordained. This would be inconsistent with the text of VYÂSA.

LXXXV.

VYÂSA :— If gold, or other *precious* thing, shall be pledged, and lost by the negligence of the receiver, that creditor, on the principal and interest of his loan being paid, shall be forced to pay the price of the pledge.

Here “ receiver ” *intends* the receiver of the pledge, or creditor ; for the pledge, being in the creditor’s possession, cannot be lost by the *immediate* fault of him who received the loan. It may indeed sometimes happen mediately : for example, the borrower, applying to the lender, with the intent of inducing his acceptance of the terms, conceals the proper food of the cow offered as a pledge, and describes it otherwise ; the creditor, confiding in his information, lends the money on such a pledge : afterwards mischief arises from change of food. In this and other cases *the reader* may draw his own inferences. But, in the case supposed, it would be inconsistent with reason that the creditor should be liable to make good the value of that pledge.

In such cases, we hold, that the matter must be settled by learned men,

men, discriminating the faults on both sides. Since no rule is expressly declared by Sages, nor any thing particularly stated by ancient Authors, *the case must be determined* by honest men of acute sense. If any rule on this subject be declared in books of other countries, they *who assert a settled rule* have the advantage *in the debate*. Thus, when a pledge is lost, if the creditor do not announce the loss, he forfeits interest, and must make good the the pledge under the authority of the texts of NÁREDA and VISHNU (LXXXI 3 and LXXXII). In this case, his concealing the loss of the pledge is a fault on the part of the creditor, wherefore interest is forfeited: and this is reasonable; for the creditor concealed the loss, from a desire of receiving interest, reflecting, “if the loss of the pledge were announced, the debtor, borrowing money elsewhere, would pay the debt and demand his pledge; by which my interest would be forfeited:” concealment therefore was a great offence. But interest only stops after the loss of the pledge; the interest due before that loss may be received.

The text of VYÁSA must be applied to the case, where the loss of the pledge was announced. Consequently, the pledge being lost by the fault of the debtor or of the creditor, and the loss not being announced by the creditor, interest is forfeited. But if it be lost by the creditor's fault, and the loss be announced, he must pay the value of the pledge, or give an equivalent, and may receive the principal and interest. In the same case, if he concealed the loss, he receives the principal without interest.

Some are of opinion, that the text of NÁREDA, “on the loss or destruction of the pledge interest is forfeited” (LXXXI 3), concerns a pledge to be used. For example; when the borrower, receiving the loan, gave as a pledge a boat or the like for use; then, should the pledge be lost, the creditor forfeits interest, and the debtor loses his property: and this is reasonable; for the loss is imputable to both parties; to the debtor, because he assented to the use of the pledge; to the creditor, because he did use it. Hence the creditor forfeits interest, and the debtor loses the thing pledged.

Here it should be noticed, that, if the pledge be spoiled (that is, broken or the like) in consequence of use, then only should this rule be applied: for, if a pledge be used, which should only

have been kept, the whole interest is forfeited; if it be spoiled, the principal is forfeited: if a pledge, liable to be used, be actually used, half the interest is forfeited; if it be spoiled, the whole interest is forfeited. This is accurate. However, this rule concerns only a pledge for use with *the assent of the pledger*. If the pledger have not assented to its use, the same rule should be understood, which is directed in the case of a pledge for custody only.

“The use of a pledge,” in the text of VISHNU (LXXXII), being expounded by CHANDÉSWARA, the use of a pledge to be kept only, it is proper to infer the loss of a pledge for custody only, in the phrase, “the creditor shall make good the loss of a pledge.” VYÁSA, specifying “gold or other precious thing,” evidently intends a pledge for custody only. YÁJNYAWALCYA (LXXXIV), ordaining the forfeiture of interest if a pledge for use be broken or the like, adds, “a pledge spoiled must be made good;” that is, if a pledge for custody only be broken or the like, an equivalent must be given. There is no impediment to this induction. Consequently the text of NÁREDA, “if a pledge be lost, the principal itself is forfeited” (LXXXIII), coinciding with the texts of other Sages, may be well expounded, “if a pledge for custody only be lost.” Or if “lost or destroyed” be explained absolutely lost, or totally destroyed by mortality, fire or the like, this may be understood of a pledge to be used: accordingly YÁJNYAWALCYA, having ordained, with a view to pledges for custody, that a pledge spoiled shall be made good, directs a pledge destroyed to be made good, as a rule concerning pledges for use. But this also concerns pledges for custody; and thus the *true* sense of the expression, “a pledge spoiled shall be made good,” is obtained. This they hold reasonable.

Others say, if a pledge for use be spoiled or rendered unfit for its purposes, interest is forfeited: the authorities are the texts above cited “on the loss of a pledge interest is forfeited” (LXXXI 3), and “there shall be no interest if a pledge for use be damaged” (LXXXIV). If the pledge be absolutely lost, being burnt or destroyed, an equivalent must be given, or the principal is forfeited: the authorities are *other* texts; “the creditor shall make good the loss of the pledge” (LXXXII); “if a pledge be lost, the principal itself is forfeited” (LXXXIII); “a pledge de-

stroyed

stroyed shall be made good" (LXXXIV). If a pledge for custody be spoiled or damaged by the negligence of the pledgee, even without the use of it, or if it be damaged by use, interest is forfeited under the text (LXXXI 3), "and even if it be only spoiled or altered." If it be *utterly* lost and destroyed, the principal itself is forfeited, or an equivalent must be given, under the text (LXXXVI) "any pledge being wholly spoiled, the principal debt shall be lost," and (LXXXIV) "a pledge spoiled or lost must be made good."

Here it must be understood, that, when the pledge is lost by the fault of both parties, one forfeits interest, the other loses the thing pledged. When it is lost by the fault of the creditor alone, it must be argued, that the creditor shall make good the pledge or give other satisfaction according to circumstances. The loss cannot *easily* happen by the fault of the debtor alone: however, should it any-how happen *by his fault*, the loss of the thing pledged falls solely on the debtor, as in the case of a loss caused by the act of God or of the king.

LXXXVI.

VRĪHASPATI:—Any pledge being used, and wholly spoiled *by the fault of the pledgee*, the principal debt shall be lost, if the pledge be of great value in respect of the debt, and he must fully satisfy the pledger.

"Wholly spoiled;" rendered totally unfit for use. "If the pledge be of great value," in respect of the sum due *to the creditor*.

The *Retnācara*.

According to the last-mentioned opinion, this concerns only a pledge for custody. But, according to the former opinion, there is no difficulty in referring it to both *sorts of pledges*. "In respect of the sum due to the creditor;" that is, in respect of the aggregate of principal and interest; for it would be improper to forfeit the principal while the interest remained *due*.

"He must fully satisfy the pledger," by humble supplication and the like. If he be not so satisfied, the pledgee must pay a

sum not exceeding the value of the pledge. Under this law, if clothes, ornaments or the like, received in pawn, be wholly spoiled by the wear of them or otherwise, should their value be equalled by the amount of principal and interest, then the principal and interest shall be forfeited; if their value be not equalled by the principal and interest, the value must be made good. When clothes worth ten *suvernas* have been pledged for a debt of four *suvernas*, in consequence of the lender's obduracy, through the ignorance of the borrower or his want of any other effects, in such a case it is understood that the value cannot be made good out of the principal and interest.

MISRA expounds the text of VRĪHASPATI (LXXXVI) as intending a debt free of interest.

LXXXVII.

MENU:—A pledge must not be used by force, *that is, against consent*: the pawnee so using it must give up his whole interest, or must satisfy the pawner *if it be spoiled or worn out*, by paying him the original price of it; otherwise, he commits a theft of the pawn.

This text concerns pledges for custody only: a pledge to be kept only, such as clothes, ornaments or the like, must not be used. The pawnee, so using it, must give up his whole interest, or must satisfy the pawner; that is, if the pledge be worn out by use, he must satisfy the owner, by paying the value which the pledge bore when it was well conditioned; otherwise, he would be guilty of stealing the pawn. CULLÚCABHATTA.

The text of VRĪHASPATI also (LXXXVI) has the same import; for that and the text of VISHNU (LXXXII) are expounded, "if the value of the pledge cannot be made good out of the principal debt, the pledgee must pay the excess, or give an equivalent."

LXXXVIII.

MENU:—The fool, who secretly uses a pledge without,

out, *though not against*, the assent of the owner, shall give up half of his interest as a compensation for such use.

The fool, who, in breach of his agreement with the owner, uses by stealth effects which should only be kept, and which were not delivered for interest *by enjoyment*, must relinquish half his interest to requite the use of *the pawn*. But, if he use the pledge by force, he must relinquish the whole interest (LXXXVII).

CULLÚCABHATTA.

It is therefore held by CULLÚCABHATTA, that, if a pledge for custody only be used by stealth, half the interest should be relinquished; but if used by force, the whole interest should be relinquished. A similar gloss is delivered by CHANDÉSWARA, *but* he does not specify *whether the text singly intend* the use of a pledge for custody or of a pledge for use, or *intend the use* of each. He adds to the gloss on the last hemistich of the last verse, “but if the pledgee do not give up the interest, he must satisfy the debtor by *paying* the computed value of such use.” Thus arbitrators tell the creditor who has used a pledge without authority, “thou must give up interest.” In that case, if the creditor refuse to give up interest, the value of usufruct should be assessed and deducted from the amount of principal and interest. The same form should also be observed in the case where half the interest ought to be given up.

But VÁCHESPATI MISRA says, in every case where the pledge is used against the will of the owner, the whole interest is forfeited; when a slave or the like, being pledged, is reasonably employed, half the interest; but if a pledge for custody be used, the whole interest shall be forfeited.

LXXXIX.

CÁTYÁYANA:—He who employs on work an unwilling *slave or other living* pledge without the assent *of the owner*, shall be compelled to pay the value of the work, or shall receive no interest on his loan.

According to all opinions, this text does not solely concern a pledge for custody; for it states employment on work, and the unwillingness *of the living pledge*; but a pledge for custody cannot be willing, nor can it perform work. The text concerns both a pledge for custody, and a pledge for use. The sense of the text is, "he who employs in labour, without the assent of the owner, a pledged slave or the like, who is unwilling to work, shall be compelled to pay the value of his labour, or shall receive no interest."

The *Retnâcara*.

According to MISRA the interpretation is the same. "The value of the work;" whatever is the just hire for the work performed by the slave, or whatever has been gained through his labour. It may also be understood of the hire of boats or the like; but in this case employment on work is figurative. Although "unwilling" be a superfluous term in respect of boats and the like, since it is only significant in respect of slaves and the rest, there is no objection to a *comprehensive interpretation*.

If a debtor, through anxiety for *the celebration of a festival*, or through generosity, assent to the use of the pledge, and *also* stipulate other interest, in that case there is no forfeiture of interest: to make this evident it is said, "without the assent of the owner." If a slave, *whose employment is not authorized*, be unwilling to work, *and be nevertheless employed*, interest is forfeited; therefore the Sage adds, "unwilling." Consequently, if a slave be employed without his own consent, and without permission from his master, the pledgee must give up his whole interest; with the slave's consent, but without his master's permission, half the interest (for this coincides with the text of MENU LXXXVIII); with the master's permission, but against the slave's will, also half the interest: else, "unwilling," in this text, would be insignificant.

This text may, *however*, be restricted to pledges for custody only. Thus the verb "do" signifies act or transact, as it is explained by those who are conversant *with law*; "work," employment *or use of* a copper caldron or the like to hold or boil rice. He who so uses such a vessel, is meant *by the text*, "Without the assent of the owner," as before explained. "Unwilling;" concerning which *pledge* it is not the will or intention *of the owner* that the creditor should benefit by the use of that caldron.

caldron. Such will *or intention* is presumed, when the owner, seeing or hearing of the use of the pledge, manifests no displeasure. It should not be objected, that *the phrase*, “without the assent of the owner,” becomes unmeaning. Although it were against his wish, he may consent through favour or the like.

When a slave, a cow, or the like, has been pledged, and interest has been separately stipulated, food must be supplied by the pledger alone. In such a case, if the creditor through tenderness supply their food, he shall receive interest, even though he employ them on work. If the debtor furnish food, but the slave perform with good humour some trifling work for the creditor, there is no forfeiture of interest. When such a contract is made, it must be attributed to the anxiety of the debtor for *the celebration of some festival, wherefore he submits to such terms.*

From the expression “without assent,” in the text of CĀTYĀYANA, it is inferred, that, should a slave be employed even with his own consent, but without the sanction of his master, half the interest is forfeited; if he be compelled by force, the whole interest is forfeited. But, should a pledge for custody be used without the assent of the owner, the whole interest is forfeited, even though no force be employed; as is suggested by the term “for custody only,” in the text, “if a pledge for custody only be used, there shall be no interest” (LXXXIV). This interpretation, consistent with the gloss of MISRA, is best. However, should the owner consent to the use of a pledge, which *regularly* ought to be kept only, and stipulate other interest, there is no forfeiture.

If the pledgee maltreat a slave unwilling to work, he shall be fined.

XC.

CĀTYĀYANA:—But he who with words, or with blows struck on a sensible part, insults or pains a pledged *slave or the like* refusing to work, shall *forfeit the interest of his loan*, and pay the first amercement.

This

This text, from the title, *under which it is introduced*, shows that he who so abuses his pledge, shall receive no interest. The first amercement is here mentioned incidentally.

The *Retnâcara*.

Since this text is inserted under the head of Forfeited Interest, the loss of interest is implied. The amount of the first amercement and other fines has been variously stated by MENU, NÂ-REDA and others; and it should be regulated, in the title of Fines, according to the degree of the offence. The sense of the text is this: "he who hurts a slave, or other *living* pledge, with blows of a staff or stick struck on a noble part, or who menaces him, shall pay as a fine the first amercement, and of course shall receive no interest." The word "staff" is used generally, intending any *instrument for inflicting* corporal pain.

Does this text concern a slave or other similar pledge employed without the assent *of the owner*, or universally any slave or other living pledge? If it be said, the first alone is suitable; for, when the employment of a slave or the like has been authorized by the owner, he may be tasked by the creditor as *if he were* his own slave; should he refuse to work, proper chastisement may be inflicted; and this is consistent with reason; the text is therefore properly referred to the unauthorized use "*of a pledged slave*:" that is denied; for he should only be bidden to work, although his employment have been authorized. The slave of another, who has amicably authorized his employment, should not be beaten: even though the usufruct were assigned in lieu of interest, the pledgee should only tell the owner, "your slave does not perform my work, you must assign other interest:" on this information the owner must do what is proper; if the creditor act otherwise, he incurs a fine. The last supposition is alone right. Accordingly it is said in the *Retnâcara*, "this text, from the title under which it is introduced, shows that no interest shall be received." On any other construction, the forfeiture of interest is *already* suggested by another text (LXXXIX), and it would be therefore improper to establish an implied sense of this text.

MENU ordains that no interest shall be received even in the case of using a pledge which *regularly* may be used.

XCI.

XCI.*

MENU:—If he take a beneficial pledge, *or a pledge to be used for his profit*, he must have no *other* interest on the loan.

If land, a cow, a slave, or the like, be delivered as a pledge to be used, the creditor shall not receive the interest already ordained on loans of money. **CULLÚCABHATTA**.

By this phrase, "land, a cow, a slave, or the like," the reference to pledges, which *regularly* may be used, is made evident. It might be proper to say, "land, cows, slaves, gold or the like;" for all concur in the forfeiture of interest, if a pledge be used, which ought only to have been kept. By the expression, "delivered as a pledge to be used," a loan bearing *that* interest, which consists in the usufruct *of the pledge*, is intimated. To remove the inconsistency of denying interest, the Sage adds "on the loan;" meaning no such interest as previously ordained by **MENU** in the form of *pecuniary* interest on loans at the rate of an eightieth part and so forth. **CULLÚCABHATTA** expresses the same in his gloss, "already ordained." Consequently, if the use of the pledge have been settled by way of interest, no other interest shall be received.

But **CHANDÉSWARA** expounds "beneficial" *actually* used. Having explained this text as denying interest generally, he cites, as a special rule, the text (LXXXVIII), which ordains the relinquishment of half the interest, "if a pledge be used without, but not against, the assent of the owner," prefacing *the text with the word "so."* Again premising "so," he cites the text of **MENU** (LXXXVII), and expounds it as ordaining, that, if a pledge be used by force, though its use be forbidden, the whole interest must be given up. Consequently there is no difficulty in referring these three texts to pledges for custody only. In this case the text *last quoted* (XCI) concerns a pledge of which the use has been stipulated, and so forth, *being intended* to prohibit interest according to circumstances. It should not be objected, since the use and profit of the pledge is *received as* interest, how

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* See V. 117.

is interest to be relinquished? If the pledge be used, half the interest, (that is, half of the legal or of the stipulated interest) must be given up, because *the use of the pledge was not settled in lieu of interest*. YÁJNYAWALCYA (LXXXIV) ordains the forfeiture of the whole interest, in every case where a pledge for custody only is used.

If a pledge to be kept only, as clothes, ornaments, or the like, be used, there shall be no interest; *nor* if a beneficial pledge, as an ox or the like, be rendered unfit for use. The *Dīpacalīcā*.

That is, if it be rendered unfit for use, there shall be no interest. A similar gloss is delivered in the *Retnācara*. But if a pledge, which *regularly* may be used, be *actually* used, since the relinquishment of half the interest is ordained, the *universal* prohibition of interest is unfit. As for a pledge to be kept only, if that pledge be used, the forfeiture of interest must be regulated in due proportion. For instance, both the value of the usufruct and the amount of interest should be ascertained and compared; as has been mentioned under the head of Prohibited Interest.

By the use of a pledge, however inconsiderable *the value of its usufruct may be*, the interest is forfeited, however great *its amount*; because the pledgee has violated the terms of the agreement.

The author of the *Mitācsharā*.

“Terms of the agreement:” the bargain: a pledge delivered for use being a pledge to be used, and a pledge delivered for custody only being a pledge to be kept.

But MISRA says, forfeiture of interest, if a pledge for custody only be used, is one rule; forfeiture of interest on the *unauthorized* use of a pledge which *regularly* might be used, is another rule; and forfeiture of interest if the pledge be damaged, is again another rule. The meaning has been already explained. The meaning of the second rule is, that half the interest is forfeited by the unauthorized use of a pledge, which *regularly* might be used; and the whole interest by the use of such a pledge, if the profit were assigned in lieu of interest, or if it be used against the consent of the owner.

XCII.

VRĪHASPATI: — If the creditor, through avarice,
use

use a pledge before interest cease on the loan, or before the stipulated period expire, the debt shall bear no further interest.

2. Like a deposit, the pledge must be carefully kept; interest is forfeited if it be damaged.

If it be agreed that a pledge shall be used at a specified time, it must not be used while the period is incomplete. This is declared *by the text*. The *Retnâcara*.

For example; a borrower receives a loan on the security of a pledge, and makes an agreement in this form: "this pledge shall remain in your possession, if I do not discharge the debt at the expiration of five years, the pledge shall be enjoyed by you:" and the borrower pays interest independent thereof. In this case the use of the pledge before the stipulated period is unauthorized; it should not be taken. But when the period has expired, then only shall the pledge be used; and interest is not thereby forfeited. If the debt were contracted with an agreement, "I will redeem the pledge when the principal is doubled;" then if the pledge be not redeemed although the debt be doubled, the pledge may be used after notice given to the debtor's kinsman. In that case also there is no further interest (CXIX).

This use of a pledge is legal: but how can amicable enjoyment of a pledge which it is in the debtor's power to forbid, be justified by law? If a creditor use a pledge without the assent of the owner, before the stipulated period expire, and before interest cease on the debt, he forfeits the interest previously agreed on, and which had not been paid. But if the interest have been paid, a deduction must be made from the principal. This is deduced from the text of CĀTYĀYANA (LXXXIX), and from common sense. If the owner, when the debt is contracted, amicably consent to the use of the pledge, interest is not forfeited: this is reasonable.

Does the text of VRĪHASPATI (XCII) concern a pledge to be used, or a pledge to be kept only, or both? On the first supposition it would be wrong to say, that a pledge for custody may not be used when interest has ceased *on becoming equal to the principal*, and when the stipulated period has expired; for the use of

a pledge given for custody is authorized after the debt is doubled (CXXI 2.) On the second supposition, what is the rule in respect of a pledge for use? If it may be used from the date of hypothecation, there is a contradiction to reason in *allowing both* the use of a pledge and the receipt of interest independent thereof. If it may not be used, even when the period has expired and the debt has ceased to bear interest, it is inconsistent with reason that a pledge for custody may be used, but a pledge for use may not be used. On the third supposition, the distinction of pledges for custody and for use would be fruitless.

To this it is answered, the text concerns both; but the distinction has its use. The unauthorized use of a pledge for custody only, even though not *expressly* forbidden by the owner, induces a forfeiture of interest (LXXXIV). If an employable pledge be used without the consent of the owner, half the interest is forfeited; but against his consent, the whole interest (LXXXVII and LXXXVIII). A pledge for custody only (LXXXIV) signifies a pledge not delivered for use, and unlimited as to time. Such is the opinion of VÁCHESPATI MISRA. But, according to CULLÚCABHATTA, the same must be affirmed of a pledge for custody which is affirmed of a pledge for use; else it is a disparagement to him that he has not distinguished them.

If a pledge for use or custody be spoiled or altered, the interest is forfeited (LXXXI 3); if it be lost or destroyed, the principal itself and the interest are forfeited (LXXXIII, LXXXI 3, LXXXVII and LXXXVI); for the term used in the text (LXXXI 3) is explained in the *Retnâcara*, "on the loss or destruction of the pledge by the fault of the lender." It is ordained in the rule of VISHNU (LXXXII) and text of YÁJNYA-WALCYA (LXXXIV), that the loss of a pledge must be made good. An alternative is *thus* stated, the delivery of an equivalent in lieu of the pledge, or the forfeiture of principal and interest. A third case is stated; payment of the *pecuniary* value of the pledge (LXXXV.) All this *must be explained* according to the fitness of the thing for use; since it is virtually the same, whether a thing be rendered wholly unfit for use, or be totally destroyed. But a pledge, though rendered unfit for use, becomes the property of the creditor; for that is reasonable. By the mere use
of

of a pledge for custody only, interest is forfeited, as appears from the term "a pledge for custody" in the text of YAJNYAWALCYA (LXXXIV): but it is proper to assert, that interest is not forfeited by the authorized use of a pledge which *regularly* should only be kept. *In general*, there is no forfeiture of interest by the authorized use of a pledge which *regularly* may be used. Interest is forfeited by the employment of a slave or the like against his will, though authorized by his master (LXXXIX). Whether the employment of him be authorized or unauthorized, if an unwilling slave be beaten, a fine shall be paid (XC). If an employable pledge be used without the consent of the owner, half the interest is forfeited (LXXXVIII). If it be used against his consent, the whole interest is forfeited (LXXXVII).

In the gloss of CULLÚCABHATTA it is stated, that the text concerns a pledge for custody only. His meaning has been already explained. A pledge, whether such as should be kept only or such as may be used, must not be used before the stipulated period expire, or before interest reach its limit. If it be used, interest is not valid against the price of its use. The value of the use must be discharged out of the interest due. This is consistent with reason. If a pledge, either for custody or for use, be rendered partially unfit for use, interest is forfeited in proportion to the injury and damage (XCII and LXXXIV). By stating forfeiture of interest in proportion to the injury or damage, the disparity of forfeiting the whole interest for trifling damage is removed. But those who follow the opinion of the author of the *Mitácshara* must affirm, that the whole interest is forfeited under the authority of the text, however inconsiderable the damage, as well by the use of a pledge to be used, as by that of a pledge for custody. This is liable to objections. Others say, if the use of the pledge be stipulated by way of interest, there shall be no other interest (XCI). Otherwise, interest is allowed at the rate of an eightieth part and so forth.

If the loss be caused by the act of GOD or of the king, what should be done? On this point,

XCIH.

VRIHASPATI ordains:—If a pledge be destroyed by
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the act of God or of the king, the creditor shall either obtain another pledge, or receive the sum *lent*, together with interest.

“Be destroyed;” become altogether unfit for use.

The *Retnâcara*:

If the debtor cannot immediately discharge the debt, he must deliver another pledge. If he cannot deliver another pledge, he must immediately discharge the debt: for without supplying the word ‘immediately,’ the alternative of delivering another pledge or paying the debt would be ineffectual. But if he be utterly unable to do either, the debt is from that period unsecured by pledge or surety; and the creditor shall receive the proper interest on such debts.

XCIV.

VYASA:—If the pledge be destroyed by the act of God or of the king, no fault is by any means imputable to the creditor; and *immediately* after the loss of that pledge, the debtor shall always be compelled to pay the debt *with interest*, or deliver another pledge.

“Shall be compelled to pay the debt;” ‘with interest’ and ‘immediately’ must be supplied. The particle has the sense of “or,” since the text has the same import with that of VRĪHASPATI (XCIII).

“Shall be compelled to pay the debt;” shall be required to pay the *debt*; for most correct speakers admit the causal passive for certain verbs only, such as go, use, know, and the like; and the verb give or pay could not otherwise be employed in the causal passive: it could not be said, the debtor shall be compelled to deliver another pledge. The same must be understood also in subsequent phrases of this sort used by authors.

XCV.

XCV.

NĀREDA:—When a pledge, though *carefully* preserved, is spoiled in *course of* time, another pledge must be delivered, or the amount of *principal and interest* must be paid to the creditor.

“Spoiled;” totally unfit for use. “The amount;” the sum borrowed, with interest: for the purport is the same with the preceding texts. If a pledged cow or the like in the course of time become old, or otherwise *useless*, another pledge must be delivered.

XCVI.

YĀJNYAWALKYA:—By the acceptance or *actual possession* of a pledge, *the validity of the contract* is maintained. If it be spoiled, though carefully kept, another chattel must be pledged, or the creditor must receive the amount of *principal and interest*.

“By the acceptance *alone* ;” by *actual* occupancy alone. By acceptance and use of a pledge, not by mere indication.

The *Dīpācalicā*.

“By use ;” alluding to a pledge delivered for use. This will be explained under the head of the Validity of Pledges.

“By acceptance” of a pledge for use or custody ; by *actual possession* or enjoyment, the hypothecation is rendered complete ; not by the mere attestation or execution of a written contract and the like.

The *Retnācara*.

XCVII.

CĀTYĀYANA:—When a pledge becomes unfit for use, or perishes, without any fault on the part of

the creditor, the debtor shall be compelled to deliver another pledge; *for*, he is not exonerated from the debt.

When a pledge becomes unfit for use, or perishes, provided that detriment or destruction be not caused by any fault on the part of the creditor, the debtor shall be compelled to deliver another pledge: in this case, the debt is not cancelled by the mere loss of the pledge. The Sage makes that evident. "Because" should be supplied. Because the debtor is not in such a case exonerated from the debt, therefore, another pledge must be delivered, or payment be made. A similar gloss is delivered in the *Retnâcara*.

As for what some affirm, that if a pledged cow or the like die by accident, the creditor's money and the pledger's property are lost, that is only founded on approved usage, not inconsistent with divine law. *The Retnâcara.*

A similar remark is made in the *Chintâmeni*, and by BHAVADÉVA and others. The meaning is, that the creditor's loss, when a pledge is destroyed without any fault on his part, is not confirmed by any Sage. But local usage on this point should not be abolished.

XCVIII.

The *Vâmena purâna*, cited by the modern VÁCHESPATI and by RAGHUNANDANA:—A man should not neglect the approved customs of districts, the equitable rules of his family, or the *particular* laws of his race.

XCIX.

In whatever country, whatever usage has passed through successive generations, let not a man there disregard it; such *usage* is law in that country.

Here it should be remarked, that if some *Brâhmana* have borrowed

rowed money on a mortgage of his land situated near a river, and that land be afterwards washed away by the river, it is not seen in practice, that the creditor's money is lost. Accordingly it is said in the *Retnâcara*, "a pledged cow or the like." This is founded on the following practice: A cow of small value dying, the debtor asserts, "he did not give sufficient attention to her cure;" the creditor affirms, "I gave the properest remedies." On this question a decision could not be passed without minute investigation. Arbitrators, therefore, mediate and determine that the loss shall be borne by both parties. This practice appears to be the ground of the usage.

From the expression "perishes" or dies, it is evident that when a pledged cow or the like dies, and from the expression "becomes unfit for use," that when it becomes totally unserviceable, the debtor shall be compelled to deliver another pledge. Although a copper caldron or the like, and land or other *immovable property*, cannot die, yet, as its total destruction is similar to the death of an animal, the same rule should be understood; for, although it be not expressly stated in the texts of VYĀSA and others, such is the import of the texts. As the principal is forfeited when the destruction of a pledge is caused by the fault of the creditor, because it is *in effect* the same with such a pledge vitiated; so, in this case also, another pledge must be given, because both are *in effect* the same. This may be inferred from reasoning.

Why is "destroyed," in the text of VRĪHASPATI (XCIII), expounded 'rendered totally unfit for use?' The answer is, to show that another pledge must also be given, if the pledge be rendered totally unfit for use. If it be not destroyed by the creditor's fault, from what cause does the loss happen? It must be understood that the loss happens by the act of GOD, or of the king; for the purport is the same with the text of VYĀSA (XCIV), and with the text of VRĪHASPATI (XCIII).

The act of the king is *meant* of pillage by an army, and the like; the act of GOD *intends* the fall of a thunderbolt, or the like: and this generally; comprehending the act of an enemy, the conflagration of a house or the like, the depredations of robbers and so forth. On this and other points the reader himself must deduce just inferences from reasoning. The *Retnâcara*.

C.

YÁJNYAWALCYA :—Mortgaged land being carried away by a rapid stream, or being seized by the king, another pledge of *land* must be delivered, or the sum lent must be restored to the lender.

This text is applicable to the case of a pledge destroyed or lost by fracture, theft, combustion, or the like.

“ Or being seized by the king ;” *in some cases* it may be legally seized by the king, to sell it for a fine imposed on the debtor, or because the king has not *actually* given the land which he had declared *an intention of* giving to the debtor, who is a soldier, or the like. Illegally it may happen in other cases also.

“ Another pledge ;” of land must be understood. If he do not deliver that, the sum *borrowed* must be repaid by the debtor, with interest. The *Retnâcara*.

“ Another ;” that is, other than the pledge originally delivered. “ A pledge of land ;” this is reasonable : but if other land cannot be delivered, any other pledge may be given. However, if the former pledge were delivered for enjoyment, he must now also give a pledge adapted to that *purpose*. Or, if that cannot be, he must give a pledge for confidence only, and pay a sum equal to the value of the usufruct of the former pledge, until the debt be discharged. But if separate interest be paid, and the use of the pledge be allowed through complacency, by these words, “ you may use the pledge ;” in that case the value of usufruct need not be paid.

It is thus evident, that if mortgaged land be destroyed, the loss falls on the debtor alone. “ Land ” is an instance only, suggesting also kine, gold, and the like. “ Carried away by a rapid stream ” is merely illustrative of a loss happening by the act of God ; for it has the same import with *the following text* :

CI.

CÁTYÁYANA :—Whatever pledge has been lost by the act of God or the king, the debt, for which it

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it was given, shall be paid by the debtor to the creditor, with interest.

The sense suggested by this text is, "whatever pledge," whether for custody only, as gold or the like, or for use, as land or the like, *has been lost* "by the act of the king," or of his officers or the like; or by the act of GOD, as carried away by a rapid stream, or destroyed by fire, &c. Accordingly it is said in the *Retnâcara*, "carried away by a rapid stream is illustrative of a loss happening by the act of GOD." This text (C) is not quoted in the *Mitâcsharâ* and *Dîpacalicâ*.

Creditor and lender signifying the same, the loss of the pledge falls on the debtor. This text ordains payment of the debt with interest; there is not consequently a *needless* repetition of the former text (XCVII). However, "lost" is merely an instance of spoiled, and so forth; for the text coincides with that of NÂREDA.

SECT. II.—On the Redemption of Pledges.

When the debtor, tendering the sum due, claims the release of the pledge, what should be done by the creditor? A small part only being tendered, should it be accepted? or should the whole amount of the debt *be alone accepted*? As to the first supposition,

CII.

VRIHASPATI ordains:—The whole amount due to the pledgee not being paid, he shall on no account be compelled to restore the pledge against his will, *nor shall it be obtained from him by deceit or confinement.*

"The pledgee;" in the sixth case, but with a dative sense; to him who has received the pledge, namely, to the creditor. If the whole amount of principal and interest be not paid to the

creditor, he shall not be compelled by the king to restore the pledge against his will. A pledge must therefore be released by the creditor, on receipt of the entire sum *due*, not on receipt of a part only. If the greater part of the whole debt have been discharged, shall the pledge be retained on account of the smaller part, or not? In answer to this question, the present text is propounded. The Sage adds, he shall not be forced to restore it by *legal* deceit, or any other of the modes of recovery.

“By deceit or confinement;” the first term is explained by some, deceit or fraud. “Confinement;” sitting constantly at his gate, or the like, as will be explained. The word “or” is indefinite, also suggesting a law-suit and the like. It should not be objected, that, from the terms of the definition of *lawful* confinement (CCXXXIX), its acceptation is restricted to payment obtained from a debtor. Such a definition, being merely explanatory, is not restrictive.

Again, when a debtor, having delivered a pledge of great value to the creditor, and repenting thereof, wishes to exchange it for one of less value, then also the exchange must depend on the consent of the creditor. This must be understood from parity of reasoning, as is observed in the *Retnâcara*; ‘when the whole sum due and secured by the pledge is paid to the creditor, who holds that pledge, then only must the pledge be released, however great its value may be.’ *The debtor* saying, “receive some other pledge, and restore the costly pledge; with the delivery of the other pledge, I will give thee a written contract, or cause the delivery to be attested:” in this case also, the king shall not force the restoration of the pledge by the modes of deceit, confinement, or the like. Nor shall the pledge be released on payment of a small part of the debt only. “Receive some other pledge, &c.” is a *supposed* speech of the debtor. In this case also, the creditor shall not be compelled to restore the pledge against his will.

A debt has been contracted on the mortgage of a piece of land, measuring a *crôsa* in circumference; a part of the debt has been afterwards paid, but the land is accidentally carried away by a rapid stream: this text may be expounded as restraining a creditor, who in that case demands a mortgage of land, measuring a *crôsa* in circumference. But the reading is (*chitrêna rachitêna*)
by

by painting or dyeing, and by manufacture, instead of (*chitrēnā-charitēna*) by deceit and confinement. Thus, when a pledge of land or the like must be delivered to a creditor, who had already received a pledge, the debtor shall not be compelled to deliver a pledge for the whole value, similar to the former pledge of valuable land or the like. In what case? To this the Sage replies, if the debt be not fully paid; that is, if the whole be not paid, but a part be paid: if a part be paid “by painting or dyeing, or by manufacture.” “By dyeing;” by the practice of the art of dyeing silk. “By manufacture;” by the practice of art in the construction of a house or the like. “Or” is indefinite; and direct payment by the practice of any other art is thereby comprehended in the text. This is a very modern interpretation.

Or the word “its” may be supplied. Thus, a pledge being lost by the act of God, another pledge should be given to the creditor who received the former pledge; but, if its amount or value have been made good by the debtor himself in the practice of some art, as dyeing or the like above-mentioned, the debtor shall not be compelled by the king, against his will, to deliver a pledge for the whole value, that is, a fresh pledge of great value. It is not affirmed, that such delivery is requisite. Consequently, the original pledge being lost, and the debtor being unable to give another pledge of the same nature, or otherwise make good its value, a pledge of great price has, in the mean time, been delivered; the intermediate valuable pledge must be restored by the creditor to the debtor, who claims redemption of that pledge, having afterwards made good the value of the original pledge, by the practice of his art.

This is general. The debtor immediately pays some part of the value of the former pledge, and will deliver another pledge at a future time; to give confidence therein, he delivers a writing or attestation: in that case also the rule is the same. This other exposition follows the gloss of CHANDÉSWARA. But on this construction, ‘by painting or dyeing, or by manufacture, the amount being partly, though not fully paid, he shall not be compelled to deliver a pledge for the whole value’ (*swadattē’c’hilam**, in-

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stead

* I translate it “not well or fully paid,” instead of, “paid by *the man* himself.” The term is expounded both ways in preceding paragraphs; but why should a new pledge of less value be given, if the debt have in the mean time been paid? T.

stead of *adattē'rt'hē'c'hilē*) is exhibited as the proper reading in some books. To expatiate would be vain.

On the other reading (*chitrēnācharitēna*) the sense may be the same; for the crude verb "*char*" bears the sense of "act," exhibited in its derivative "*āchāra*" usage or practice, and in other instances. In either case, arising on these two interpretations, it must be affirmed, that, if the debtor tender payment of a part only of the debt, the creditor need not release the pledge; for no law ordains that it shall be then released. According to CHANDÉSWARA, another text of VRĪHASPATI (CIII) ordains, that a pledge shall only be released when the whole amount of the debt has been paid. This will be stated hereafter.

Simple men attribute an active sense to the word "pledgee" in the sixth case. Thus the construction is, "the amount, which should be paid by the pledgee or creditor, not being delivered, the debtor shall not be compelled by the king, in any of the modes of recovery, by deceit, confinement, and the rest, to deliver the pledge to the creditor." Consequently, if the debtor, having executed a contract of hypothecation, has not received the whole loan, although he have demanded it, and has therefore obstructed the enjoyment of the pledge, this text establishes the rule of decision on such a case. It will be mentioned, that hypothecation is not valid on a writing alone without enjoyment. These interpretations are either founded on the text, or on the reason of the law. They should all be admitted.

As to the second question, (*the whole debt being tendered, must it be accepted?*) if the debtor have contracted the debt on an agreement, that the pledge, consisting of land or the like, shall be enjoyed so long as the principal sum remain undischarged, but that no interest shall be paid, independent of the pledge; in that case, the principal alone being tendered, it must be accepted. The same Sage ordains it.

CIII.

VRĪHASPATI:—When the debtor, tendering the principal sum, demands the pledge, even then it must be released; otherwise the creditor is criminal.

This

This concerns a pledge to be used for an indefinite period.

The *Retnâcara*.

“Otherwise;” that is, if he procrastinate, coveting the enjoyment of the pledge; or if he covet *and demand* other interest. The following text declares an offence as well in regard to pledges for custody as others:

CIV.

YÁJNYAWALCYA:—To the debtor who comes to redeem his pledge, the creditor shall restore it, or be punished as a thief; and if the creditor be *dead or* absent, the debtor may pay the debt to his kinsmen, and shall take back his pledge.

“Who comes to redeem his pledge;” who approaches the creditor, bringing what is due to the creditor, *namely* the principal sum with or without interest. To him the pledge shall be restored by the creditor, after receiving the money from the debtor. Otherwise, if he do not restore it, he is guilty of stealing *the pledge; that is, he shall be punished.* CHANDÉSWARA.

If the creditor be dead, or have gone to another country, what must be done? The Sage replies, “if the creditor be *dead or* absent, the debtor may pay the money to his kinsmen;” to his sons and the rest; to his heir, or to any person charged with the support of his family: “and he shall take back the pledge” from the sons and the rest.

“To his kinsmen;” literally, to his family; that is, to his sons and the rest. The *Retnâcara*.

“To his family;” to his servant or agent.—The *Mitâcshará*.

Should the son or other *competent* person refuse to restore the pledge, then, by the same reasoning as before, he is guilty of theft. If any dispute arise concerning the receipt of his property by either party, that must be determined, and the delivery and receipt made *good*. If a false plea be set up, through avarice, by the creditor, he shall be punished as a thief. If the son *of the pledgee* say, “I have not power to accept payment of the debt without my father’s consent,” what must be done in such a case will

will be mentioned *in its place*. The debtor being *dead or* absent, if his son or other heir come to the creditor, or to his son, for the purpose of paying the principal sum with interest, then also, as before, must the pledge be restored. Such is the unexceptionable method of CHANDÉSWARA.

To the debtor, who comes to redeem his pledge, it must be restored by the creditor on receiving the principal and interest.

The *Dīpacalīcā*.

But HELÁYUDHA expounds the first half of the text of YÁJ-
NYAWALCYA (CIV) and the text of VRĪHASPATI (CIII),
“having mortgaged a village or the like, on the next day he comes
to pay the debt; but the creditor, coveting interest, neither ac-
cepts payment of the debt, nor relinquishes the mortgage; in that
case, he shall be punished as a thief.” Ultimately there is no
difference. It is only necessary that a pledge be restored by the
creditor, on receiving from the debtor the amount then due,
namely the principal sum with or without interest. Or, if the
creditor be not at hand, the debt must be paid to his son or other
representative; and from him must the pledge be received, as
above mentioned. HELÁYUDHA, grounding his gloss on that of
CHANDÉSWARA, has in no respect contradicted it.

When land is mortgaged on these terms, “this land shall be
enjoyed by thee to the end of such a period,” the land shall be en-
joyed to the end of that period; the debtor cannot compulsively
redeem the pledge on the second day after the debt was contracted:
for there is no such special law, and the texts of VRĪHASPATI
and others ordain penalties for other cases. This appears from
the gloss of CHANDÉSWARA, “this concerns a pledge to be
used for an indefinite period.” By HELÁYUDHA’s expression,
“on the second day,” it is intimated, that a debtor may redeem
a pledge by the payment of the principal only on the second day;
on the subsequent day, or later, he must pay the debt with interest:
but, if the stipulated period be unexpired, he cannot redeem the
pledge; for that is suggested by the phrase, “on the second day,”
and by the condition, as specified by CHANDÉSWARA, that it
be unlimited as to time; and that is not contradicted in the work
of HELÁYUDHA.

“The second day” is mentioned, because a pledge may be
redeemed

redeemed on the second day by a debtor tendering the principal only without interest; must not a pledge be also released when a debtor tenders the principal with interest before the fixed period have expired? No; as it is directed that stipulated interest exceeding the rates prescribed by law shall be paid when it has been *expressly* stipulated, so the enjoyment of a pledge is reasonable for so long a period as has been *expressly* stipulated. On this reflection CHANDÉSWARA has said, "a pledge to be used for no definite period;" and this must be acknowledged even by HELÁYUDHA; for the following text is expounded, "what has not been held to the close of its term."

CV.

VRIHASPATI:—When a house or field mortgaged for use has not been held to the close of its term, neither can the debtor obtain his property, nor the creditor obtain the debt*.

However, two cases have been stated by two authors, in which the debt may be discharged by payment of the principal only. Such is the difference.

If the creditor be dead or absent, YÁJNYAWALCYA has ordained, that the pledge may be redeemed by payment of the debt to his son or other representative. The same *legislator* propounds another case.

CVI.

YÁJNYAWALCYA:—Or appraised at the value it then bears, it may remain with the creditor, exempt from interest.

The pledged chattel, then appraised by men skilful in valuation, may be fixed in the creditor's possession, with the attestation of witnesses. Thence forward the principal, though not

* See the gloss on this text cited again at V. 118.

not paid, carries no interest; for the debt is in a manner discharged by the appraisement of the pledge. If the creditor be not at hand, the debtor may redeem the pledge from his sons or other *representatives*, and pay the debt to them, or he may fix the pledge in the creditor's hands at the value it then bears: the particle "or" intends this alternative.

An alternative is of two sorts, optional, or regulated by the law. "Optional" may be instanced in written contracts and attestation; at the option of the creditor the debt may be delivered with a writing or with an attestation. "Regulated by the law" may be exemplified in *debts* quadrupled or octupled; quadrupled, if the loan consisted of cloths or the like; octupled, if clarified butter and the like were lent: and here an alternative arises in respect of *legal* regulation.

CHANDÉSWARA intends only a regulated case. For example; if the creditor be dead, and his son or other heir be present, the pledge may be redeemed by paying the debt to him only. By parity of reasoning, the same *may be done*, if the creditor reside in another country, if he be confined by the king, have absconded through fear of the king or the like, be afflicted with disease, be insane or the like. Consequently, when a competent creditor is absent, and his son or other *representative* is present, if the debtor can redeem the pledge from the son or other *representative*, and the son or representative can accept payment from the debtor, he may redeem the pledge by payment of the debt to that son or representative. This is one case. But if the son or other heir reside abroad with the creditor; or if the creditor be dead, and his son or heir reside in another country, or be confined by the king, or have absconded; or if the son or heir say, "my father, who resides in another country, knows all the circumstances, I am totally uninformed;" or if the creditor or debtor dispute the matter; in *all* these cases the debtor must fix the pledge in the hands of the creditor, appraised at the value it then bears. This is the second case.

If he and his family reside in another country, how should mortgaged land or the like be fixed in the hands of the creditor? It is answered, 'through him who transmits the produce of land or the like situated in one province, to a creditor residing in another province, such a pledge is enjoyed: or, in whatever manner the

the pledge was previously possessed, even so it may be fixed in his hands.' But this case supposes the debtor's wish to part with the pledge by selling it, or *to redeem it* by borrowing money elsewhere.

Thus, if the creditor be not so circumstanced that he can restore the chattel, but the debtor, to sell it, or having borrowed money elsewhere, wishes to redeem the pledge, what must be done? For this YĀJNYAWALKYA provides, "or appraised, it may remain with the creditor." CHANDÉSWARA.

Since the creditor is not present and competent, the debtor's wish cannot be gratified. But, if the debtor have no desire to *redeem the pledge*, by whose desire should the pledge be redeemed? It must wait the debtor's wish: and his desire to part with the pledge is ineffectual without some mode of payment of the debt. It must therefore wait his sale of the pledge, or his borrowing money elsewhere. This, however, is merely illustrative; for the same rule is apposite, if the debtor wish to redeem the pledge, having obtained money in alms, by commerce, or the like.

Although the pledge cannot be sold to another while the debt remains undischarged, since the redemption of the pledge without payment of the debt is denied by the text of VRĪHASPATI (CII), still, if he could give confidence to the purchaser by a surety or otherwise, the debtor may have received the price. To such a case this rule is applicable. The two cases, as mentioned by YĀJNYAWALKYA, and connected by the word "or" which intends the regulated alternative, must be understood only when the creditor is present and competent.

In the *Dīpalicā*, 'SŪLAPĀNI observes, if the pledge for any reason be not restored to the debtor, the pledge, appraised at its then value, may remain in the house of the pledgee, exempt from interest. The expression "for any reason" comprehends other cases also, such as that stated by CHANDÉSWARA. For example: the creditor is present and competent *to civil transactions*, but the pledge, either gold weighing a hundred *palas*, or a horse, which had been seen by many persons, is at the creditor's house in another province, and he cannot immediately go thither; or a slave or the like, delivered as a pledge, has gone to another country on business: in these cases, the pledge should be

be appraised by men conversant with the value of things, after learning, both from the debtor and creditor, that the gold is unmixed with other metals and so forth, or that such is the age or strength of the horse or slave and so forth; and the debtor should fix the pledge in the hands of the pledgee, declaring "the pledge ascertained at such a value by appraisers and witnesses, or certified in writing, shall remain in thy possession." So in other cases also. Ultimately there is no contradiction between those *authors*. However, the appraisement is made in such a case by desire of the creditor or debtor, or both. This exhibits a portion of the subject, which CHANDÉSWARA also has treated partially.

But if a period were *stipulated*, the creditor entertains no such wish before the period expire; or, if he do, he has no right to the use of the pledge: and interest cannot be forbidden at the will of the debtor. When the period has expired, the debtor's *option* prevails. At his choice the pledge may be redeemed, or a value affixed to it; for, if he do not then redeem it, his property is divested (CXII). But in a case unlimited as to time, the redemption or foreclosure of the mortgage depends solely on the will of the debtor. To expatiate would be vain.

Here the valuation of a pledge only is mentioned, not its sale. In this case, the creditor, returning from abroad, may restore the pledge on receiving so much money *as was due when the pledge was valued*. Herein the *Retnâcara* concurs. The same should be understood in the *proposed* case of a slave, and also in other cases. It should be here observed, that, if the pledged slave or other pawn, having grown old or the like, bears a less value when the creditor, returning from abroad, restores the pledge, than was the value at the time of appraisement, the loss must fall on the creditor alone; for a value was then affixed merely that the principal may bear no further interest. But if the value be enhanced by circumstances of season or the like, the profit does not accrue to the creditor; for YAJNYADATTA has no true property in the value of a chattel belonging to DÉVADATTA. But the loss falling on the creditor is the consequence of his fault in not then restoring the pledge. In this there is nothing incongruous.

If the value of land, or other mortgaged property which is permanent,

permanent, be reduced from the circumstances of the times or the like, what is the rule? In that case also the loss falls on the creditor; since the debtor may say, "the value is only now reduced in consequence of a dearth or the like; when I offered to redeem the pledge, it bore a greater value." By specifying "the value it then bears," the Sage intimates generally a *possible* loss falling on the creditor; *he does not state* specially, that in some instances no loss falls on the creditor. But in fact all this must be understood of the natural price of commodities: if the debtor, redeeming the pledge from the creditor on his return from abroad, sell it for a low price through the exigence of his affairs, he is not entitled to recover the difference of price from the creditor; but only when the just price *is reduced* by circumstances of season. This should be held reasonable.

When mortgaged land or the like has been appraised, by whom should it be enjoyed? And is a pledged slave or the like to be employed or not after the appraisement? On these doubts it is said: the use and profit of a pledge is the interest on it; interest ceasing, it follows, that the *usufruct* ceases. If the pledge were such as might be used *without detriment* (for instance, a tree or the like), but if the use of it were not authorized, the use of it was previously unlawful; surely now, after the appraisement, it is *unlawful* as before. The pledge being nevertheless used in the subsequent period, half the benefit must be paid to the debtor; but used though *expressly* forbidden, the whole profit must be made good to the debtor. If he assent to it, usufruct must be admitted as authorized by him. But the expression of YÁJNYAWALCYA, "may remain with the creditor," has been expounded, may be fixed in the creditor's *possession or enjoyment*; supposing the case where the usufruct is not forbidden. Accordingly 'SÚLAPÁNI has said, 'the pledge may remain in the house of the pledgee, exempt from interest;' not, 'it may remain in the pledgee's *possession or enjoyment*.' Thus may the law be concisely stated.

YÁJNYAWALCYA (XLVI) propounds a form of redemption of a pledge when the creditor is present. This *text* concerns the case where the thing was pledged on these terms, "when the double sum has been received from the use of the pledge, it shall be restored by thee." That is, provided interest were stipulated; else

else the pledge must be restored on payment of the principal only. This is called in the world a voidable pledge. — The *Retnâcara*.

The very same import is stated in the *Dîpacalicâ*. It may be thus explained; a pledge delivered on this stipulation, “I will redeem this pledge by paying the debt at the close of two years,” is a pledge to be released at a specifick term, namely at the term of two years. In like manner, a pledge stipulated to be restored when twice the amount of the sum for which it is lodged shall be received from the use of it, is a pledge to be released on a specifick condition: this is called “a voidable pledge.” “Provided interest were stipulated;” provided it bore interest; provided interest were agreed on. “Else,” if no interest were stipulated, the pledge must be released “on payment of the principal only,” that is, when the single sum has been received. Or, if the agreement were in this form, “enjoy the pledge until the principal sum be paid;” or in this form, “enjoy the pledge until twice the principal sum be paid” (provided that *in the last case* the debtor pay interest out of other effects); the creditor shall enjoy the pledge so long as the principal sum remain undischarged.

If the pledge be used, the price of it must also be paid.

The *Mitâcsharâ*.

The value of the use must be paid to the debtor. Such being the case, if the agreement run in this form, “enjoy the pledge until three times the principal be paid,” what is the rule in that case? Twice the amount of the principal is alone approved by law: hence the subsequent use of the pledge is improper. If it be alleged, it is not improper, being of the nature of stipulated interest; the answer is, even in the case of stipulated interest the law has not authorized the receipt of more than double the principal paid at once.

CVII.

VISHNU:—That immoveable property, which has been delivered, *restorable* when the sum borrowed is made good, the creditor must restore when the sum borrowed has been made good.

There

There is no difficulty in referring this text to a debt exempt from interest.

CVIII.

VRĪHASPATI:—When land or other *immoveable property* has been enjoyed, and more *than the principal debt* has accrued therefrom, then, the principal and interest having been realized, the debtor shall obtain his pledge.

When land or the like has been enjoyed, and by that enjoyment more than the amount of the principal, that is, interest, *has been received*, surely the principal *sum* has been obtained: repeating this the Sage propounds the law, “the principal and interest *having been realized*,” &c. The apposition is connective. CHANDÉSWARA delivers a similar gloss. This must be understood only when it was agreed that the pledge should be restored after the principal and interest have been realized; for it coincides with the text of YÁJNYAWALCYA, above cited. The same *legislator* expressly declares it.

CIX.

YÁJNYAWALCYA:—When a debtor mortgages land to his creditor, declaring and specifying, “this shall be enjoyed by thee, even though interest cease *on becoming equal to the principal* ;”

2. That pledge shall be restored to the debtor, whenever the principal and interest shall have been received. This is declared to be the legal rule concerning pledges for loans on interest.

“Specifying;” ascertaining. “Although interest have ceased;” although it have reached the limit of interest, the pledge shall be nevertheless enjoyed until the principal and interest be paid.

The *Retnácara*.

If the pledge be delivered with an agreement that it may be used even after the period in which interest accumulates to its highest limit, the enjoyment of it is reasonable even after the period in which the highest interest accumulates. In answer to the question, how long may it be used? this text particularly states, so long as the principal and interest are not acquitted by the use of the pledge, the creditor may use it. The import of the text may be thus stated on a full consideration of the gloss delivered in the *Retnācara*.

It should not be affirmed, that this text concerns only the case of a special agreement, and the preceding text (CVIII) the case where no special agreement has been made: and thus, if no period have been stipulated, the creditor must release the pledge when the debt is doubled; but, in the case of a special agreement, the pledge shall be enjoyed until the debt be discharged, and the text permits the pledge to be so long enjoyed. The following rule of VISHNU denies the redemption of the pledge without a special agreement, even though the debt be doubled:

CX.

VISHNU:—Even though the utmost interest have accumulated, *the creditor need not restore* an immoveable pledge without a special agreement.

The meaning of the text (CIX) is this: when the debtor delivers a pledge declaring and specifying, “this land shall be enjoyed by thee (the creditor) even though interest cease *on becoming equal to the principal*,” (for the interest has accumulated to its utmost limit, when interest ceases;) that pledge shall be restored, when the principal has been received. It is consequently suggested, that a pledge may be used until the principal sum be discharged, even though interest have *regularly* ceased. Or the text (as some remark) may be expounded in a different import: when a pledge is delivered with an agreement, that it shall be enjoyed even though interest cease; in that case, when the interest has been received from the use of the pledge, it must be restored,

restored, if the principal be discharged out of other funds ; but if not, the pledge may still be retained.

CXI.

YÁJNYAWALCYA:—But a pledge shall be enjoyed until actual payment of the debt*.

If a debt amounting to one hundred *suvernas* be nearly discharged, but five *suvernas* remain due, the sense of the text is, *that so long as that remain unpaid, the pledge shall be retained*. No law directs that the half or quarter of the pledge shall be restored. On the other hand, in the foregoing gloss on the text cited from VRĪHASPATI (CII), it is not positively ordained that it may not be restored. But this seems a great disparity. If any particular practice subsist in certain countries, it should be deemed satisfactory. This should be held by the wise. In fact, it follows from the condition stated in the text of VRĪHASPATI above cited (CII), “against his will,” that the pledge may be restored if the creditor consent ; and such consent is proper in this case, since the use of a pledge adapted to a large sum is improper when a small sum only remains due.

How is the principal or the interest liquidated from the use of the pledge ? The form may be thus stated : when arable land has been mortgaged and a debt contracted, in the month of *Srāvana*, the produce being gathered in the month of *Pauṣha*, and the interest due from *Srāvana* to *Mārgaśīrṣha** being liquidated from the price of that *produce*, if the amount exceed *the interest*, the principal may be liquidated ; if it be deficient, payment will be *taken* from the value of the produce obtained in the following year. If it be annually deficient, the pledge may be enjoyed for a longer time than six years and eight months, even until the interest be fully discharged : afterwards, on payment of the principal, the pledge shall be delivered up. But when the *exact* amount of interest, neither more nor less, is obtained from land in the month of *Jyaiṣṭha*, (the debt being contracted on the mortgage of inhabited ground, *the rent of which is payable in that*

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month,)

* See V. 229.

† *Agrahāyana*.

month,) a period of thirteen years and four months must be completed; in that case the debt is discharged with interest, on receipt of half or a part only of the amount of rent for the current year.

This occurs in the case of legal interest at the rate of an eightieth part of the principal. But the use of a pledge until the principal sum be paid from other funds, occurs in the case of interest by enjoyment. If the principal be paid in the month of *Jyaisht'ha*, the rent of the mortgaged ground must be received in due proportions by both parties*. As a pledgee may not receive the whole rent in the month of *Pausha*, when the owner, contracting the debt in the month of *Cārtica*, mortgages land which affords annual rent in the month of *Pausha*, but shall receive the proportion of rent for two months; so, if payment be made after some years, in the month of *Srāvana*, he shall receive the proportionate rent for seven months of the current year; that is, seven parts of the whole rent divided into twelve parts. But if he receive the whole rent inadvertently in the month of *Pausha* of the first year, then, deducting a sum sufficient to discharge the interest, the surplus should be applied to liquidate the principal. In such circumstances, the principal being annually diminished, it is fully liquidated in a short period. If the land cannot yield so much rent in a subsequent year, the debtor must make good the sum from his own funds, in conformity with the agreement. If it produce a surplus, that must be applied to the liquidation of the principal; and interest shall not subsequently be paid on that part of the principal.

Yet if the agreement bore that the pledge shall be enjoyed until the principal be paid, the same rule prevails in the case of a mortgage of inhabited ground; for, since rent should be daily receiveable for the occupancy of the ground, it is proper that the creditor should receive the rent accruing from the date of the loan. If land or the like be mortgaged, which yields rent on account of the produce, receiveable by custom on a day certain, and if the payment be settled for the month of *Pausha*, then, although the whole rent for that year would otherwise have been received, yet, if the debt be paid in the subsequent month of *Mārgasīrsha*,

* Because the full amount of interest was realized in the eighth month of the seventh year.

Mārgaśīrsha, it appears from the reason of the law, that the creditor shall not receive the rent of that year; since a day has been set for the payment of rent on account of produce, and the land was possessed by the creditor on that day in the year when the loan was made, but had been redeemed before that day in the year when the debt is paid. Still, however, as an inconsistency would occur in practice, because no interest would be received when a debt, contracted on the security of such a mortgage in the month of *Māgha*, was discharged in the earlier month of *Mārgaśīrsha*, in a subsequent year, the matter must be otherwise regulated, by a distribution of the rent as before, or by yielding the rent of the subsequent year.

If a milch cow or the like be pledged for use and profit, the interest should be liquidated, in conformity with the agreement, from the computed daily profit; and, if possible, the principal should be liquidated. This induction has the authority of law. With the consent of the debtor and creditor, an adjustment is formed on a middle valuation settled by arbitrators. Such is the current practice.

“The double sum,” in the text of YÁJNYAWALKYA (XLVI), supposes a loan of gold or the like; but if clothes or the like were lent, a treble sum and so forth must be understood, as stated in the section on Limits of Interest. However, when the agreement was in this or similar forms, “I will restore the pledge when the double sum has been received,” the creditor need not restore the pledge before the debt has been discharged. Thus VISHNU, having premised that the creditor must restore the pledge, subjoins the text *above cited* (CX).

Many special agreements may be made in respect of pledges. Some of these shall be now mentioned. 1. “This land is
“ mortgaged for a debt of twenty *suvernas*; when forty *suvernas*
“ have been realized from the use of it, you must release the
“ mortgage.” 2. “If I do not redeem the pledge when the
“ principal has accumulated to forty *suvernas*, this shall become
“ thy absolute property.” 3. “The pledge shall be enjoyed by
“ you, until the principal and interest have been realized.” 4.
“ If I do not then redeem the pledge, when the principal and
“ interest have been realized, it shall become thy absolute pro-
“ perty.” 5. “The pledge shall be enjoyed by you for ten
N 3 “ years.”

“ years.” 6. “ The pledge shall be released on the receipt of
 “ the principal sum at the end of three years.” 7. “ If I do not
 “ redeem the pledge at the expiration of ten yeats, it shall be-
 “ come thy absolute property.” 8. “ If I do not redeem the
 “ pledge by paying the principal sum at the expiration of three
 “ years, it shall become thy absolute property.” 9. “ The
 “ pledge shall be enjoyed by thee for three years, I will after-
 “ wards redeem it by paying the principal sum ; if I do not re-
 “ deem it at the expiration of the fifth year, it shall become thy
 “ absolute property.” 10. “ Enjoy the pledge for ten years,
 “ and you may subsequently enjoy it *unless I then redeem it* ; if I
 “ do not redeem it at the close of the twelfth year, it shall be-
 “ come your absolute property.” 11. “ This pledge may be
 “ used by thee so long as interest accrues ; afterwards, on receipt
 “ of the principal, the pledge must be restored.” 12. “ If I do
 “ not then redeem it, the pledge shall become thy absolute
 “ property.” 13. “ If I do not redeem it within two subse-
 “ quent years, it shall become thy absolute property.” 14.
 “ The pledge may be used until I pay the principal sum.” 15.
 “ If I do not pay the principal and redeem the pledge, it shall
 “ become thy absolute property.”

“ Mortgaging this village or the like, I borrow twenty *suver-*
 “ *nas* ; from this village thou shalt receive interest on that sum
 “ at the rate of an eightieth part of *the principal* ; the remainder
 “ shall be received by me.” Ten forms of this agreement, as
 above stated, make twenty-eight forms*. Again ; mortgaging a
 village or the like, the debtor says, “ half or a quarter of the
 produce of this village shall be enjoyed by you ; the rest I will
 take.” Since there are also ten forms of this agreement, forty
 modes of agreement have been suggested. “ Accepting this vil-
 lage or the like in pawn, lend twenty *suvernas*.” Forty other
 forms may be stated in this mode. “ Accept this village in
 “ pawn ; from its produce supplying the expences incident to
 “ it, give me ten *suvernas*, and take the remainder yourself.”
 In this mode there may be numerous forms of agreement : and
 various

* I cannot well correct the obvious error in the numbers : it is unimportant. However, among the fifteen contracts particularized, four, and perhaps the fifth also, cannot be accommodated to this case of specifick interest. We may therefore read twenty-five instead of twenty-eight, and correct the subsequent numbers by reading fifteen instead of ten.

various forms exist in fixing the term of the mortgage and so forth. To avoid prolixity they are here unnoticed, but they are numerous. The law concerning them may be understood by the repetition of the rules delivered respecting others. But a contract for hypothecating the merit of ablutions in the Ganges, and the like, shall be mentioned.

The settled law in respect of these may be thus stated. Under the first agreement, the sum of forty *suvernas* being completed, if the debtor, tendering the principal sum, offer to redeem the pledge, it must be then released. Such is the opinion intimated in the *Retnâcara* by the condition stated (in the gloss on the text CIII) "a pledge to be used for an indefinite period." It has been already discussed. But, computing the sum realized from the use of the pledge in the period during which it has been held, and fully liquidating the forty *suvernas*, he may redeem the pledge. According to the *Dipacalcâ*, if he do not redeem the pledge when forty *suvernas* have been realized, it becomes the sole property of the creditor.

CXII.

YĀJNYAWALCYA :—The pledge is forfeited, if it be not redeemed when the debt is doubled : since it is pledged for a stipulated period, it is forfeited at that period ; but a pledge to be used for an unlimited time is not forfeited.

The debt being doubled, if the debtor do not then redeem the pledge, it is forfeited to the creditor. A similar exposition is delivered in the *Calpateru*. But HELĀYUDHA says, 'this text concerns a pledge for custody only :' in which opinion the author of the *Mitâcsharâ* concurs. Their notion appears to be this : if a beneficial pledge be not redeemed, although twice the principal have been received from its use, the creditor sustains no loss : why then should it be forfeited ? But, since a pledge for custody is not used, why should the creditor long preserve unprofitably the property of another ? The pledge is therefore forfeited by a debtor who has stipulated a period for redemption.

Others think, that such reasoning, which is not authorized by the law, may not be trusted. At the stipulated period, whether before or after the principal is doubled, a pledge limited as to time is forfeited, and becomes the property of the creditor: and this concerns the seventh form of agreement. According to this opinion, what is the import of the phrase, "but a pledge to be used is not forfeited?" It concerns a pledge delivered for use, in the fourteenth form of agreement, "the pledge may be used until I pay the principal sum."

But, although it be cursorily intimated that both *pledges* become the sole property of the creditor whenever the principal is doubled, provided the debt consisted in shells, whether pledged for use or custody; still, as reasonable practice no-where in the universe shows the creditor's property without the consent of the pledger, when brads or the like has been pledged with a special agreement, CHANDÉSWARA, therefore, intimating that it is not admissible in his opinion, by adding "it must be otherwise expounded," himself propounds the case: that is forfeited which has been pledged with a declaration in this form, "if the pledge be not redeemed when the principal is doubled, it shall become thy sole property." Consequently, the second form only is intended by the expression of YÁJNYAWALCYA, "the pledge is forfeited."

This is founded only on the inconsistency of a *different* practice. Thus, under the first form of agreement, if the pledge be not redeemed after the double sum has been realized, a moveable pledge may be used, notice being given to the debtor or his family (CXIX). The debtor's property is not then forfeited, for there is no proof of *such* forfeiture; and nothing opposes this application of the phrase, "a pledge to be used is not forfeited." But immoveable property should be restored when the double sum has been realized. Such is CHANDÉSWARA's opinion, and that is proper; for the land or other thing which is pledged belongs to the debtor while it remains a pledge, as much as it did before; but he cannot dispose of it at pleasure, while it is a pledge: how then should the debtor's property be divested when the principal is doubled, since there is no efficient contract in the nature of gift or sale? It should not be objected, that, under the authority of the text, the forfeiture of property in a pledge unredeemed is
acknow=

acknowledged in the *Mitácshará*. That is improper, since it is difficult to deduce a forfeiture not previously stipulated, from a text which may be otherwise expounded. It should be affirmed, that forfeiture of property only takes place *in cases intended* by the text of YÁJNYAWALCYA on Title by Long Possession.

CXIII.

YÁJNYAWALCYA:—He who sees his land possessed by a stranger for twenty years, or his personal estate for ten years, without asserting his own right, loses his property in them.

For YÁJNYAWALCYA, in a subsequent text, declares property not forfeited in certain cases.

CXIV.

YÁJNYAWALCYA:—Except pledges, boundaries, sealed deposits, the wealth of idiots and infants, things amicably lent for use, and the property of a king, a woman, or a priest versed in holy writ*.

This also is subsequently mentioned by CHANDÉSWARA. What is propounded by the Sage (CXII), states the cause; “pledged for a stipulated period, &c.” that for which a specific term was settled, when his own property should be divested, and property should be vested in the creditor, is forfeited at *the expiration* of that term. In whatever case, and in whatever mode, the owner has agreed to the forfeiture of his own property, and the *consequent* property of another, so shall it of course be. The period, in which the principal is doubled, is a specific term: this also is a stipulated term. Not fearing repetition, *the Sage* has assigned a cause of forfeiture. Thus may the law be concisely expounded.

“A pledge to be used is not forfeited;” a pledge to be used for

* The last hemistich was not cited in this place,

for an unlimited time is not forfeited, even though *unredeemed* for a thousand years. But if a period be stipulated, other texts are found *which provide for that case.* The *Retnâcara*.

Since there can be no enjoyment of produce from a pledge for custody only, a pledge for use is meant. "For an unlimited time;" a pledge for which no time has been stipulated, when the owner's property shall be divested, and property be vested in the creditor. "But, if a term be stipulated;" if a pledge be delivered with a term fixed for annulling his own property, and vesting property in another, other texts of Sages, quoted or unquoted, are found, *which provide for that case.* Consequently, whatever text declares the creditor's property in the pledge, concerns this alone. Even where the principal sum has been doubled, and the forfeiture of property has been stipulated, VRĪHASPATI propounds a legal period *for the equity of redemption.*

CXV.

VRĪHASPATI :—After the time for payment has past, and when interest ceases *on becoming equal to the principal*, the creditor shall be owner of the pledge: but the debtor has a right to redeem it before ten days have elapsed.

CXVI.

VYĀSA :—Gold being doubled, and the stipulated period having expired, the creditor becomes owner of the pledge after the lapse of fourteen days.

2. But a pledge to be used, of which the term has elapsed, the debtor shall *only* recover, on *then* paying, from other funds, the exact amount of the principal.

After the time for payment has past;" when the term, which
was

was settled in regard to the pledge, is completed. For example, ten years, or the like, in the 7th form of agreement; three years, or the like, in the 8th; five years, or the like, in the 9th; twelve years, or the like, in the 10th; two years after interest has been fully liquidated in the 13th; and, even in the 14th form, any time subsequent to the payment of the principal sum: in these and similar instances the period expires. How can it happen that a man should have paid the principal, and not have redeemed the pledge? It may happen when the principal sum has been any-how received through the intervention of another, but the debtor, apprehensive of punishment on account of some offence, has absconded.

“When interest ceases;” when the principal is doubled: and this concerns the second form of agreement above mentioned. “After the time for payment has past;” in this case a term different from the period when interest ceases should be understood, by the same rule with the expression “bring the kine and oxen*.” The construction of the phrase is, the creditor shall be owner of the pledge.

“Before ten days have elapsed;” does not this concern the case, where it is agreed, “if I do not redeem the pledge within ten days after the principal is doubled, it shall become thy absolute property?” This should not be affirmed; for it would be inconsistent with practice. When no such agreement is made, the interval of ten days is nevertheless required: and that would be inapplicable, when the term was past. Such is the mode of interpretation consistent with the gloss of the *Retnâcara*.

The interval of ten days, ordained by VRĪHASPATI, must be understood of a debtor who resides at home. But if he do not, VYĀSA propounds the rule (CXVI). “Gold being doubled,” has the same import with the expression “when interest ceases.” “The stipulated period being expired;” when a term has been fixed in regard to the pledge, and that term is past. It corresponds with the preceding text. The subsequent verse (CXVI 2) is intended for another distinction. “The exact amount;” that is, without interest. The *Retnâcara*.

Consequently this concerns the fourth, eighth, and fifteenth forms of agreement.

Here

* Where one term is generick, and the other specifick. T.

Here an observation should be made. If the debtor happen to have gone to a distant country, or be dead, and his son or other heir be not yet capable of business, or if the debtor be a captive; even in these, and similar cases, no law ordains that the property shall not vest in the creditor when the term of the mortgage is expired. It can only become the property of the debtor, or of his son, when the creditor, through tenderness, or at the intercession of others, restores it. But when the agreement runs in this form, "if I remain in my own country, and do not redeem the pledge, it shall become thy absolute property;" then, should the debtor reside in a foreign country, he does not forfeit *the pawn*.

If the creditor reside in a foreign country, the mode of proceeding has been mentioned (CIV and CVI). But if the chattel happen not to be appraised on that day, witnesses must be taken of the debtor's going to the creditor's house for the purpose of redeeming the pledge. To this proceeding there is no objection. If a dishonest creditor suffer the remaining days of the period to elapse, and his fraudulent practice be proved, and the debtor's going to the creditor for the purpose of redeeming the pledge be also substantiated, no loss is sustained by the debtor. Again, if the creditor and his family were then absent in a foreign country, but the debtor go to him on his return from abroad, we argue that there is no offence if the debtor afterwards go abroad. More would be superfluous.

Under the first, third, fifth, eighth, and eleventh forms of agreement, if the pledge be long unredeemed, may, or may not, the creditor hypothecate it to another, or sell it? In all forms of agreement, is a sale valid, which is made on the supposition of property, in consequence of long enjoying the pledge?

CXVII.

MENU:—If he take a beneficial pledge, he must have no other interest on the loan; nor, after a great length of time, *or when the profits have amounted to the debt*, can he assign or sell such a pledge.

The

The first hemistich has been expounded (XCI), as forbidding other interest, when the use and profit of a pledge has been settled as the only interest. The last hemistich determines the two questions proposed.

“ After a great length of time ;” when it has long remained. “ Assignment ;” in pledge to another. “ Sale ;” an act divesting his own property. However long it have remained, a pledge received, and left in his possession after he has himself asked money of the debtor, must not be assigned by the creditor in pledge to another person for a larger sum. The *Retnâcara*.

‘ Assignment in pledge to another ;’ consequently, so long as the debtor’s property subsists, a creditor must not assign, as a pawn to another for money borrowed, a chattel pledged by his debtor. This text is expounded in a similar manner in the *Mêd’hâtiti’hi*, and by GÓVINDA RÁJA. VÁCHESPATI MISRA and BHAVADÉVA also concur in this interpretation.

‘ An act divesting his own property :’ sale is a contract annulling the party’s own property in his chattel after receiving a price ; but, in this definition, an act divesting his own property *simply* is expressed by the word sale : it consequently suggests a gift or absolute barter. The ox, pledged to, and possessed by me, shall be this day employed in burden by you ; but to-morrow your ox shall be employed by me : such an exchange for one day is nevertheless unexceptionable. This *appears to be* meant in the *Retnâcara*.

‘ After he has himself asked *money of the debtor* ;’ when the creditor demands money of the debtor, but he, though required, pays not the money nor receives back his pledge ; then, if the creditor, impelled by poverty, attempt to assign that same pawn to another person for money borrowed, the text prevents him. But HELAYUDHA explains “ assignment ” gift. In his opinion, the creditor may receive a loan from another person, assigning the pawned chattel in pledge to him. CULLÚCABHATTA also intimates, that the assignment of a pawn to another is unexceptionable, by adding, “ for usage allows hypothecation of mortgaged land or the like to another person.”

On this interpretation, if the creditor contract a debt, assigning mortgaged land or the like to another, then, should he haply be unable to discharge his own debt, and the *original* debtor come

to redeem his pledge, how should the matter be adjusted? On this it is correctly said, if a pledge for custody be transferred as a pawn to another, and the debt be less than the former one, or equal to it, then, discharging his own debt with the money paid by the original debtor, and *thus* redeeming the pledge, he should restore it to the owner. But a pledge should not be transferred as a pawn for a greater debt: this is expressly stated in the *Retnacâra* and other works; "a pledge must not be assigned for a larger sum." It should also be considered as meant in the *Méd'hâtiti'hi*, and by GÓVINDA RÁJA.

If the pledge were for use, it should be transferred without any contradiction to the *former* agreement. For example; it should be assigned by the original creditor, with a declaration in this form, "the pledge shall be used so long as I do not cause the original debtor to pay the principal sum *now borrowed*;" not in this form, "it should be enjoyed ten years or the like." Yet if that be done by any careless person, let the pledge be lodged in the hands of the ultimate creditor, with the consent of the first lender, along with a certificate of its value at the time, settled by an appraisement made and signed by five persons. But, in fact, should a creditor transfer a pledge which he has received on dissimilar terms, he shall be punished. In the same mode should the decision be also argued in other cases. But the word "assignment" is properly expounded as signifying hypothecation; for, in certain cases, hypothecation is forbidden, and gift may be comprehended in the definition of sale. To include permanent barter, the word sale must be taken in a secondary sense.

This text is founded on reason or immemorial usage. If a creditor therefore, in breach of this law, transfer a pledge which he had taken, a moral offence is not imputed to him, but the chattel must necessarily be restored to the debtor when he offers to redeem it (CIV); if the last lender refuse to release the pledge, the original creditor may be put to much trouble, or sustain a loss: this should be understood. But the last creditor is only enabled to exact another pledge from the original lender, or payment of the principal and interest, not to refuse the release of the pledge. Should the creditor, in breach of this law, absolutely give it to any person, the gift is not valid; whence then should any benefit, arising from the gift, be even supposed? For he has no property

perty in the pledge, since it has not been relinquished by the debtor ; but its use alone has been conceded to him. “ Who can benefit by giving away the property of another ? ” This text forbids a pretended gift. The sale of a pledge will be considered in the chapter on Sale without Ownership.

Mortgaged land or the like should be carefully preserved by the creditor ; it should not, *by any means*, be neglected. A debtor mortgages land for the debt contracted ; the creditor uses it a few years, and afterwards another possesses it without any opposition from him. In such a case, the debtor could not redeem the mortgaged land, which had been possessed for twenty years ; for he is poor : but sees the land possessed by a stranger, yet asserts not his title, erroneously thinking his opposition improper, because a stranger possesses it. Afterwards, when a law-suit is instituted, the possessor having acquired a title by undisturbed possession for twenty years, the land cannot be restored to the debtor offering to redeem the pledge, and the creditor must give other land as an equivalent. Therefore it should not be neglected. This some remark.

But others ask, why does not the debtor oppose *adverse possession* ? Since the pledge is lost by the fault of the debtor, an equivalent in land need not be given by the creditor. If the possessor, though verbally forbidden, do not refrain, what can the debtor say when he applies to the king ? He may say, “ this violent man possesses my land mortgaged to another ; if the occupant be not now restrained, he will, after long possession, assert a title, because he may have possessed it twenty years.” The debtor’s not applying to the king is therefore an evident fault ; why should the creditor give an equivalent for land lost by the debtor’s fault ? But if the possessor, attending the court, affirm, that the pledgee gave him possession, and that plea do not then appear to be false ; in such a case indeed the pledge is lost by the fault of the creditor alone : it is therefore proper he should give an equivalent.

Others again hold, that the text of YAJNYAWALKYA (CXIV) being equally applicable to a pledge received by another as to a pledge received by the possessor himself, no title to that land is gained by *adverse possession* for twenty years. On this account neglect has not been included *in the text* by the author of the *Retnācara* and the rest. The justness of these opinions should be

examined under the head of Title by Long Possession : more would be here superfluous.

The term (translated “assignment”) may signify the nature of the thing. For example, a bracelet, an ear-ring, or the like, made of gold, should not, by exposure to the fire, be reduced to gold bullion, *which is its natural form* : and the alteration of a pledge is forbidden by the word “and,” *which bears the sense of “and the like.”*

But hypothecation is not forbidden in all cases. For instance, one has contracted a debt, delivering a pledge on these terms, “the pledge may be used so long as I do not pay the principal sum :” after a few years the creditor demands the debt from the debtor, but he is unable to discharge it ; the creditor therefore assigns the pledge to another on similar terms, and borrows an equal sum. Such cases occur in practice.

This text (CXVII), according to CHANDÉSWARA, VÁCHESPATI, BHAVADÉVA, and others, concerns a pledge for use or custody with no special agreement. But the author of the *Calpateru* says, it concerns a pledge to be used. This is mentioned on consideration of the chief intent of the text, but with no view of restricting it to pledges for use. CHANDÉSWARA so expounds the text. But the author of the *Mitácshará* holds, that it solely concerns pledges for use ; this is only suitable on his interpretation.

A certain author has thus expounded the text : since a period has been specified, no assignment or sale of a pledge should be made by the debtor within the stipulated period. He thinks that the creditor, having no property in the pledge, could not be supposed entitled to give or sell it ; a prohibition would be therefore impertinent. It should not be objected, that this would contradict the text, “if a pledge be sold, the sale shall be valid ;” since the sale of mortgaged property, being forbidden, could not be valid : the difficulty, *he thinks*, is removed by referring that text to a pledge unlimited as to time. But this does not coincide with the opinion of CHANDÉSWARA and the rest : because, in the first hemistich (CXVII), an agent being sought for the phrase “must have no other interest,” the creditor is of course suggested as the agent : here also, it being questioned who cannot sell the pledge, the same person, already suggested, must be

be the agent *in the sentence* : accordingly the gloss of the *Calpa-teru*, *Pārijāta*, and *Mitācśharā*, must be supplied with the words “shall not be made by the creditor.”

When a debtor, having mortgaged land or the like to a creditor, sells the same property, or absolutely gives it away to another ; then, since coexistent mortgage and sale, or mortgage and gift, are incompatible, it will be stated, under the title of Comparative Force of Contracts, that the latest contract, whether sale or gift, is valid. Hence the gloss, which supposes gift or sale by the debtor prohibited, is irrelevant. It should not be objected, how can gift or sale be valid, since, by stipulating a specific period, the owner has conceded his independence? Although he be not independent, his property subsists. Consequently, the efficient validity of sale or gift is uncontroverted, if it be said, as the debtor's property in the pledge was absolute, so shall be the buyer's or donee's : and authors have not stated as unfounded the text, “an unredeemed pledge shall neither be sold nor given away.” Such is the mode of interpretation agreeable to the gloss of CHANDÉSWARA : VÁCHESPATI and BHAVADÉVA concur in the same exposition.

The text of YÁJNYAWALCYA (CXII) concerns the case of an agreement in the second form, “if I do not redeem the pledge when the double sum has been realized, it shall become thy absolute property.” The text of MENU, “nor, after a great length of time, can he assign or sell such a pledge” (CXVII), concerns the case of an agreement in the first form, where the clause, “it shall become thy absolute property,” has not been inserted. No contradiction can be supposed between these two forms of agreement.

In all agreements for a definite time, if the debtor wishes to redeem the pledge within the stipulated period, by paying the principal and interest, VRIHASPATI propounds the law for that case.

CXVIII.

VRIHASPATI* :—When a house or field, mortgaged for use, has not been held to the close of its term,

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neither

* The first verse has been already cited and numbered CV.

neither can the debtor obtain his property, nor the creditor obtain the debt.

2. After the period is completed, the right of both to their respective property is ordained ; but, even while it is unexpired, they may restore their property to each other by mutual consent.

“ For use ;” the seventh case has a casual sense. Consequently the meaning is, a house or field which has been mortgaged for use. “ When that has not been held to the close of its term ;” when it has not reached the full term : neither can the creditor then recover the debt, nor the debtor obtain his mortgaged property. Consequently, from this result, that, while the period is incomplete, the debtor shall not obtain his pledge, nor the creditor recover the debt, it follows, that the wish of recovering the pledge is ineffectual. After the period is completed, the right of both the creditor and debtor to the money lent, and to the pledge respectively, that is, the free use of their own, is *in full force*. Consequently the creditor has a right to the money lent, and may use it as his own, at the full term ; and the debtor has the same right to the property mortgaged. Yet, even while the period is unexpired, if the creditor voluntarily accept payment of the debt, and restore the pledge, or if the debtor freely discharge the debt to recover the pledge, the debtor’s right to the pledge, and the creditor’s right to the money lent, are immediately efficient. The Sage declares it, “ but even while it is unexpired, &c.” they may act by mutual consent ; may accept the debt, and receive back the pledge : with the consent of the creditor, the debtor may take his pledge ; and with the consent of the debtor, the lender may take his money. Consequently, while the period is unexpired, the debtor’s wish to recover his pledge is fruitless, without the consent of the creditor ; and the creditor’s wish to obtain the money, without the consent of the debtor : but, with the consent of both parties, it is effectual. Such is the interpretation according to the gloss delivered in the *Retnâcara*.

In some parts of the *Retnâcara* the last hemistich is found *with this reading*, “ but, even while it is unexpired, they must perform

form what was agreed by both parties." That is not found in the *Chintāmeni*, nor is it quoted by BHAVADÉVA, nor inserted in the *Mitācsharā*. If *this reading* be well founded, the sense is this: were it declared by the debtor or creditor, at the time of contracting the debt, "even before the period expire, if the principal and interest can be paid, the pledge must be restored;" in such a case, the pledge may be restored, and the debt be discharged, even while the period is unexpired. If this reading of the last hemistich be unfounded, the same sense may be deduced from the phrase "by mutual consent." For the mutual agreement of the parties when the loan was advanced, as well as consent when payment is tendered, may be signified by the words "mutual consent."

If the agreement run in this form, "take this land as a pledge, and lend me twenty *suvernas*;" when should the pledge be redeemed? On this point it is said, such being the words uttered by the borrower, the lender must ask, "how long shall I use the pledge?" In answer to which, the borrower specifies a term. When the debtor has been long in the habit of receiving and repaying loans of the same creditor, then, nothing being expressly declared, there is no tacit agreement in regard to the term; consequently, this agreement falls within the forms above mentioned. Or, should it any-how exceed that enumeration of forms, the pledge must be restored when the double sum has been received; for it is of course legally fit that a pledge be restored after the double sum has been received.

Under the general law, that a pledge shall be used until the debt be repaid (CXI), is not the use of the pledge proper until the principal sum be discharged? No; from the coincidence of the text of CĀTYĀYANA, V. xxxvii 3, (where the use of a pledge for a loan made with an agreement, that the whole use and profit of the pledge shall be the only interest, is denominated interest from the use of the pledge, and which is also called interest by enjoyment,) this text (CXI) must be referred to the same case. It should not be objected, that there is no argument for the restoration of a pledge, in such a case, after the double sum has been realized. The text of YĀJNYAWALKYA (XLVI) is authority for such an induction. Nor should it be objected, that this contradicts the text of VISHNU (CX). That text is limited

to immoveable property. Nor should it be asserted, that the word "immoveable" is merely illustrative of a general sense. There is no proof *to support such an assertion*; nor any grounds for restricting the text of YAJNYAWALCYA. A pledge unlimited as to time must therefore be released when the double sum has been realized, provided it consist of moveable property; but immoveable property, under the authority of the law, may be used so long as the principal remain undischarged. Even though it be not then redeemed, the debtor does not forfeit his property in the pledge; for the text (CXII) concerns the case of an agreement containing a clause to this effect, "it shall become thy absolute property." But, if the debt be contracted on a pledge given for confidence only, without *such* a special agreement, the debt should be recovered by the same mode of recovery as ordained for debts unsecured by a pledge.

A pledge delivered by the pledger, to give confidence to the lender, must be carefully preserved by the creditor, and be restored on receipt of the whole sum due. The *Retnācara*.

Consequently, in the case of a pledge to be used, since the creditor may derive benefit from the use of it, he has no solicitude in regard to the payment of the money. But, in the case of a pledge to be kept only, the creditor derives no benefit from the pledge; on the contrary, he has the trouble of keeping another's property; he may therefore be anxious to recover his money: but, since there is no other mode, he must adopt one of the five modes of recovery, that which is consonant to moral duty, suit in court, legal deceit, lawful confinement, or violent compulsion: and, in such a case, the time for recovering the debt is that which was stipulated by the borrower for the payment of the debt; or, if none were stipulated, the period when the debt is doubled; for that is prescribed by law as the time for redeeming a pledge. This is consistent with reason: and this mode of proceeding, say some lawyers, supposes a case where the use of the pledge has been forbidden; or it supposes the case of a pledge consisting of masses of iron, and the like.

But, if the debtor be absent, having absconded, or the like, from whom shall the creditor recover his money? A text of law, cited in the *Retnācara*, provides for this case.

CXIX.

Smṛiti :—After giving notice to the debtor's family, a pledge for custody may be used when the principal is doubled, and so may a pledge for a limited period when that period is expired.

When the principal is doubled, a pledge for custody may be used after giving notice to the debtor's family in this form: "Having borrowed money from me, but not having yet redeemed the pledge, the debtor has absented himself, and the principal has been now doubled by the interest: thou art his heir; I therefore give thee notice, as required by law, that henceforth the pledge will be used by me." The Sage's meaning is this; if the debtor's heir himself pay the debt to the creditor, and take the pledge; or if he say, "wait a few days, I shall send information to the debtor;" the pledge must not be then used. But if the heir do not redeem the pledge, nor give information to the debtor, then, taking the attestation of several persons, the creditor may use the pledge.

"A pledge for a limited period;" a pledge, for which a specific period has been fixed, may be used after that period has expired, notice being first given to the debtor's family. Such is the sense of the text.

The use of a pledge delivered for use may be renewed: if it be agreed, "the pledge shall be enjoyed for two years; afterwards, paying the debt, I will redeem this pledge delivered for use; the use of the pledge shall cease at the close of that period:" in such a case, if the debtor, happening to go to another country, be absent, and the debt be not paid, nor the pledge redeemed, then the use of the pledge is authorized after notice given to the debtor's family. What is said by the author of the *Retnācara*, ('this authorizes the use of a pledge delivered for use, without however conveying the absolute property, if no period were stipulated,') intends generally any moveable pledge for use under such circumstances. But immoveable property being pledged for use, must only be relinquished, if it were agreed, "I will restore it when the principal is doubled, or the like;"

like ;” for, since it cannot move to another place, there can be no apprehension of its being seized by another person. But moveable property must be preserved with the utmost care, until it be restored to the debtor.

In the present case, after notice given to the debtor’s family, the use of the pledge is to be taken as wages *for the care of it*. This is intended by the text. Here “the debtor’s family” is merely an instance of a general injunction : therefore, if the debtor himself be present, but procrastinate the redemption of the pledge, it is reasonable that the creditor should use it after giving him notice ; and this may be equally affirmed of pledges for custody, and pledges for use : it should be *so* argued if the agreement be in the sixth or other similar form above stated, and sometimes also in other cases.

It appears from the term “may be used,” and from the gloss, “this authorizes the use of a pledge, without however conveying the absolute property,” that the creditor shall only use the pledge : he has no property therein. Consequently, although the creditor use the pledge, it must be restored to the debtor returning after the lapse of several years. Such is the sense of the law.

In such a case shall the principal sum be received by the creditor with the whole interest ? To this question the answer is, it appears from the conditions in the text of VRĪHASPATI (XCII), “before interest cease on the loan, or before the stipulated period expire,” that there is no forfeiture of interest in consequence of using a pledge for custody after the period has elapsed, or the like. But, in the case of clothes and similar things, since they would be totally spoiled by use, it is reasonable that the principal and interest should be forfeited *in consequence of using them*.

But if the debtor die, or abscond, and notice cannot be given to his family, what is to be done ? A text quoted in the *Retnācara* provides for that case.

CXX.

Smṛiti :—If the debtor be missing, or dead, let the creditor produce the writing *in a court of justice*,
and

and obtain a certificate from the court, specifying the period which it bore.

Let the creditor produce the writing in the king's court, and there obtain a document specifying the term which it bore; let him there obtain a certificate. A creditor using a pledge after such *precaution*, commits no offence. The *Retnâcara*.

The meaning is this: when a debtor is missing, or has absconded, the pledge may be used after notice given to the debtor's family, as ordained by the preceding text; but, if notice cannot be given to his family, then, producing the writing in the king's court, let the creditor obtain a certificate. If the debtor be dead, the pledge may be used after notice given to the debtor's family, as is signified in the preceding text; yet, if notice cannot be given to the debtor's family, but heirs of the debtor exist in some *other* country, let the creditor produce the writing in the king's court, and obtain a certificate. Such is the sense of the text.

The certificate is delivered by the king conditionally; it should express, "until the debtor or his heir attend, the pledge shall remain with thee, and shall be used by thee." "A certificate from the court;" a writing certifying the continuance of the pledged property with the creditor. That the pledge shall be used, appears from the expression in the *Retnâcara*, "a creditor using a pledge after such *precaution*, commits no offence." But if neither the debtor nor his heir be *living*, the mode of proceeding in that case will be subsequently mentioned from a text of CĀTYĀYANA.

CXXI.

VRIHASPATI, cited by MISRA and BHAVADĒVA, under the title of Recovery of Debts:—When the debt is doubled by the interest, and the debtor is either dead, or has absconded, the creditor may attach his *pledge*, or the debtor's chattel, and sell it before witnesses:

2. Or having appraised it in an assembly of good men,

men, he may keep it ten days ; after which, having received the amount of his debt, he must relinquish the balance *if there be any* :

3. Having ascertained his own demand by the help of men skilled in arithmetick, and taken the attestation of witnesses, he commits no offence by thus recovering it.

These texts are also cited in the *Retnâcara*, but the reading is *tad bandhujnyâtiividitam*, instead of *taddhanam jnyâtrivividitam*, and it is expounded, “ notice having been given for the assurance of the debtor’s relations *.”

CXXII.

CĀTYĀYANA :—When the pawner is missing, let the creditor produce his pledge before the king ; it may be then sold, with his permission : this is a settled rule :

2. Receiving the principal with interest, he must deposit the surplus with the king.

These texts of VRĪHASPATI (CXXI) are contradicted by the text above quoted (CXX) ; for that text suggests, that if the debtor be not present, the pledge should be used after obtaining the king’s sanction ; but the text of VRĪHASPATI suggests, that the pledge may be sold if the debtor be not present : consequently there is an evident contradiction in authorizing the use and the sale of the same thing in the same case. An alternative is therefore allowed in this case by the system of civil law ; for an alternative is true in logick when the matter is totally optional. Consequently, when the debt is doubled, and the debtor is not present, being dead, or having absconded, the creditor may use the pledge after giving notice to the debtor’s family ; if notice cannot be given to the debtor’s family, the creditor may exhibit the writing before the king, and use the pledge with his permission :

* See a further comment on these texts after V. 291.

sion: this is one option. Or waiting, or not waiting ten days, he may sell the pledge: this is a second option.

The text of VRĪHASPATI may be thus expounded: "When the debt is doubled by the interest;" this is a general illustration, the same must be understood when the period has expired. It is a mere instance: the case described relates only to silver coins and the like; but if grain or other commodities were lent, it should be said, when the principal is quintupled or the like. "And the debtor is dead," or has gone to another country, "or has absconded;" that is, cannot be found, because he conceals himself. But if the debtor live in another country, and some person who is his heir say, "let the sale be postponed for ten days, I will fetch the debtor, or bring money from him and redeem the pledge;" in that case the creditor should keep the pledge ten days, but he should previously appraise it. The words "ten days" are merely illustrative; in proportion to the number of days in which the debtor can arrive, so long should he keep it, as awarded by arbitrators.

If the value of the pledge exceed the amount of principal and interest, what should be done? The Sage declares, he should take the amount of his debt and no more. What shall be done with the surplus? The Sage declares, "he must relinquish the balance;" he must deliver it to the heir, or to the king. The text is so expounded by BHAVADÉVA.

"*Jnyâtrivīditam* (according to one reading of the text), known to witnesses;" having taken the attestation of witnesses. Consequently the taking of a pledge in payment of a debt should be attested, as well as the sale of it. "He commits no offence;" VÁCHESPATI expounds the word in the neuter sense: a creditor recovering his debt, even by compulsion or the like, shall not be punished by the king.

CXXIII.

YÁJNYAWALCYA:—Or, even in the absence of the debtor, the creditor may sell the pledge before witnesses.

If the debtor or pawner be not present, then, selling the pledge
and

and taking the amount of the debt, the creditor should deliver the surplus to the heir, or to the king. The *Dīpacalīcā*.

The meaning is this: if the debtor live in another country, or happen not to be present, the creditor should deliver the balance of the price to the debtor's son, brother, or the like, before witnesses, that the debtor may receive it when he returns. This appears from the gloss of BHAVADÉVA and of the *Dīpacalīcā*. As a debtor, if the creditor be absent, deposits the amount of the debt with his son or other heir, so the creditor, if the debtor be absent, deposits the balance of the price obtained for the pledge with his son or other heir. This also is founded on the gloss of BHAVADÉVA and of the author of the *Dīpacalīcā*. If there be no heirs, or if they be absent, or if they refuse to receive it, he should deliver it to the king (CXXII.)

“When the pawner is missing (CXXII);” when he cannot be found, being dead, having absconded, or having gone to a distant province, the debt being doubled by the interest, let the creditor apply to the king, and also produce the writing: this must be understood. “With his permission;” with the king's consent to the sale, the pledge may be then sold: the text must be so supplied. After which, taking no more than the principal and interest of the debt from the price for which the pledge is sold, let him deliver the balance to the king. This distinction occurs: if the debtor be actually living in another country, it is merely intrusted to the heir, or to the king; but if he be dead, the creditor should give it to the heir, or, on failure of heirs, to the king. This is reasonable: a debtor having delivered a pledge to a creditor, has property in the pledged chattel so long as he lives; afterwards, his property being devested by death, property vests in his heir; it is therefore proper to give his chattel to him. On failure of heirs, property vests in the king; but under the rule of VISHNU (Book V, v. 417) the failure of heirs signifies the failure of fellow-students. Accordingly CHANDESWARA, in expounding the text of CĀTYĀYANA (CXXII), delivers this gloss, “when the pawner is not living, nor any person entitled to inherit from him.” But the *escheated* pledge of a *Brāhmaṇa* must be given to learned men, or to priests, under the text of DÉVALA (Book V, v. 445). All this will be discussed under the title of Inheritance.

CXXIV.

YÁJNYAWALCYA :—A debtor shall be compelled to pay, with interest, a debt contracted on the pledge of religious merit; and he shall be compelled to repay two-fold a debt contracted on a chattel of small value delivered with a solemn asseveration.

“Religious merit;” the use of sacrificial fire, ablutions in the Ganges, and the like: what is received on such a pledge must be repaid with interest. What has been lent on a pawn of small value, delivered with a solemn asseveration, in this form, “it shall certainly be redeemed by me,” must be repaid two-fold, if the debt remain long due; the pledge shall not be sold by the pledgee.

It is noticed in the *Dīpacalīcā*, that the text is read in the *Viśvarūpa*, “*charitra*” instead of “*chāritra*.” The commentator’s opinion is this: *charitra* signifies act or practice; *chāritra* has the same signification; the meaning therefore is, what is borrowed on the pledge of ablutions in the Ganges or the like.

Ablutions in the Ganges, and other religious acts, are pledged when the debtor, on contracting the debt, says, “until I repay thy loan I will not bathe in the Ganges.” The term “use of sacrificial fire,” relates to the voluntary use of it on special occasions, not the continual use of it by those who maintain a perpetual fire. Here ablutions in the Ganges and the like constitute a beneficial pledge to be kept only, not a pledge to be used; since the debt therefore is not discharged by the use of it, how shall it be discharged? The Sage therefore ordains, that he (the king) shall compel the debtor to pay the debt with interest. The meaning consequently is, that payment shall be enforced by the king.

CHANDÉSWARA delivers a similar gloss, but he reads the text (as in the *Dīpacalīcā*) *charitra bandhāca cṛitam*, and expounds it, “for if ablutions in the Ganges be not performed, the king shall compel the debtor to pay the debt with interest.”

“When ablutions are not performed;” they are hypothecated, and

and therefore not performed. We explain *charitra*, ablutions in the Ganges and the like; *cháritra*, the benefit arising from such ablutions. When that is pledged “*the debtor shall be compelled &c.*,” for instance, when a debt is contracted with an agreement in this form, “if I do not repay thy loan, the benefit of my ablutions in the Ganges shall accrue to thee.” But this can only be a pledge for custody, for it would be lost *to the debtor* were it enjoyed *by the creditor*; the debt must therefore be discharged as in the case of pledges for custody: the pledge is not forfeited. The author of the *Mitácshará* delivers a similar exposition.

“A pawn of small value;” a pledge, of which the value does not exceed twice the amount of the debt. This half of the text (CXXIV) restrains a creditor who might attempt to sell the pledge, on this reflection; “twice the amount of the debt is receivable by me, what objection therefore can the debtor have to the sale of this pledge?” The meaning is, since no agreement was made, when the debt was contracted, to authorize a sale, how should the pledge be sold? This must be understood when the pledge is not redeemed after the principal is doubled. However, there is no offence in a sale made, after application to the king, with the king’s permission.

We hold, that, when no pledge is delivered by the debtor, but he solemnly promises, at the time of receiving the loan, “I will assuredly repay thee thy loan,” then conscientiousness is in reality his surety. In that case, on proof of the debt, he shall be compelled by the king to pay twice the amount. To enlarge on this subject would be superfluous.

On this text the author of the *Mitácshará* thus comments: “A pledge by *the act of the parties* is *charitra bandhaca*. Consequently, when a pledge of greater or less value is taken with the free consent of the debtor or creditor, the double sum only shall in that case be received by the creditor; that is, the pledge shall not be forfeited. At the period when the principal is doubled, the double sum only shall be paid; there shall be no forfeiture of the pledge. In the case of earnest also, there is no forfeiture of a pledge.” This is only suitable on his interpretation. He expounds the terms of the text otherwise (“earnest delivered,” instead of “solemn asseveration”); this other subject is incidentally

ally introduced under the title of Pledges. He adds, when the merchant who buys a commodity, giving earnest to the merchant who sells it, concludes a bargain for the purchase of goods amounting to a thousand *mudras*, if the buyer break the agreement, *the earnest* shall be forfeited; if the seller break the agreement, it shall be repaid two-fold.

SECT. III.—*On the Validity of Hypothecation and Mortgage.*

CXXV.

VYÁSA :—Pledges are declared to be of two sorts, immoveable and moveable; both are valid when there is actual enjoyment, and not otherwise.

And this concerns a pledge delivered for use.

CXXVI.

VRĪHASPATI :—Of him who does not enjoy a pledge, nor possess it, nor claim it *on evidence*, the written contract *for that pledge* is nugatory, *like a bond* when the debtor and witnesses have deceased.

Here, *terms of comparison*, as and so, must be assumed. “When the debtor and witnesses have deceased;” when neither the debtor nor the witnesses exist. Hence, as a writing executed by the debtor and attested by witnesses is nugatory unless the debtor or witnesses be living, so of him who enjoys not a pledge, nor makes it his own, nor shows to others that the pledge was actually received, the writing, though complete, is no evidence so far as concerns the pledge. The *Retnâcara*.

Even after the death of the witnesses and debtor, if the creditor

ditor actually enjoy the pledge, that pledge is valid ; how can it be asserted that the writing is nugatory ? To this it is answered, some person comes and makes a demand upon another in these words, “ thy father is my debtor, inspect this bond ; all those “ who witnessed it are dead, and thy father also is dead : ” as in this case, so, if there be no other proof of a pledge, a mere writing is nugatory, because it is unavailing. That is mentioned by way of example. Or, *it may be thus explained* ; if a chattel belonging to some person have been enjoyed for a few days *only* by another, or be contested, and the possessor, sued by the owner before the king, allege, “ his father received a loan from me, and the bond is forthcoming ; ” then, if the witnesses be dead, the writing is nugatory, even though there be actual occupancy. Such being the case, there is no difficulty *in explaining the text* without assuming *the terms of comparison* as and so ; for the sense would be, he who does not actually *possess nor* enjoy the pledge may not claim it ; and a writing is nugatory when the witnesses and debtor are deceased : and in this case, undisputed possession, and a term *fixed* for the restoration of the pledge, must be understood. It may therefore be affirmed, that when possession has been interrupted, but witnesses are living, the pledge is valid ; yet, in the case of uninterrupted possession, the pledge is valid even though the witnesses be dead.

‘ Nor shows to others, &c.’ to others besides those named in the writing, that is, for the purpose of evidence. Consequently the affirmation of it to another should only be made in the presence of the defendant. Or “ claim ” may signify sue before the king. The writing, though complete, is no evidence, even though correctly drawn, in the form already described, with all its conditions, “ first inserting the lender’s name and so forth.” Hence a writing in this or other similar forms, “ I borrow one hundred *suvernas* from DÉVADATTA,” is certainly unavailing.

“ It is no evidence so far as concerns the pledge ; ” it follows, that the writing may be good evidence so far as concerns the debt. Consequently the sense is this ; if there be a writing, payment of the debt proved by that writing shall be enforced ; but, without *actual* occupancy, a pledge, though proved by that writing, shall not be obtained. Why does he not actually enjoy or occupy it ? Has it been restored on receipt of another pledge,

or has it been released on a solemn promise *of payment* or the like ? Or the sense may be this ; if the loan have been actually received from the creditor by the debtor, for what fault should the creditor lose it ? But a pledge long unenjoyed cannot be seized. As a man's own effects, being neglected by him and long possessed by a stranger, become the absolute property of the possessor ; surely, if a pledge, which is the property of another, be not possessed by the pledgee, it is the absolute property of the owner who does possess it.

What then is suggested by the word “claim?” for those to whom the claim is shown become witnesses only ; but if the thing be unpossessed through neglect, of what use are witnesses ? The answer is, he should fully show, in an assembly of people, the reason why he has not possession. For instance, “executing a mortgage deed to me, he has received a loan, why does he not deliver the pledge ?” Such a dispute is supposed. But if a contest do subsist, as possession is not *then* valid *without proof of right*, neither is an unenjoyed pledge valid. This is one case. “This ornament is pledged to me : but his daughter's nuptials will be celebrated two months hence ; his wife may wear it for that period, afterwards it must be delivered to me.” This is another case. On these and similar occasions, if the recorded witnesses be alive, they can depose these circumstances. There is not consequently any contradiction between the first and last case.

Here the expression “does not enjoy” concerns a pledge for use ; “nor possess” concerns a pledge for custody ; “nor claim” concerns both. The *Retnâcara*.

But this text does not concern a pledge for custody consisting of ablutions in the Ganges, or other observances producing religious purity ; for it is not applicable *to such pledges*.

And this is nearly, *but not strictly true* ; for a pledge, whether for use or custody, may be confirmed, although it be not ascertained whether it have been actually possessed or not.—The *Retnâcara*.

This meaning is intimated ; although he have not himself shown his claim to other men, yet if they know *and depose* the whole circumstances, even in that case also the pledge is confirmed.

A text of law, cited in the *Retnâcara*, expressly declares the nullity of a pledge in a case of neglect.

CXXVII.

Smṛiti:—A house, a reservoir of water, a market place, grain, women, beasts of burden, and the like, are destroyed or spoiled by neglect.

“A market place;” a place where commodities are sold.

The *Retnācara*.

“Water,” preserved for his own use. “A reservoir of water;” a well or the like. “Beasts of burden” are expressed in the plural number, to signify “and the like.” Consequently a garden, a field, and the like, are comprehended by the text; in short, all kinds of pledges are destroyed by neglect. If the pledgee neglect it, a house is destroyed or spoiled for want of thatching; a well or the like, for want of extracting earth by which it is choked; a market, for want of concourse of buyers and sellers through fear of ill disposed persons; grain, by robbery or the like; cattle, women, and beasts of burden, for want of food or care: so in other instances according to the circumstances of each case.

“They are destroyed,” and utterly lost; or they remain, but are spoiled and become unfit for use. By this mention of things destroyed or spoiled, neglect is shown blameable; and it is a fault on the part of the creditor. Consequently, if the pawner preserve them, they would be possessed by the debtor: but if he do not preserve them, they are lost; and why should another pledge be delivered to the creditor? The debt therefore remains unsecured by a pledge.

CHANDÉSWARA remarks; “when mortgaged houses and the rest are destroyed or spoiled by the fault of the pledgee, the mortgage is annulled. It is therefore implied, that another pawn shall not be given by the pawner in consequence of the pawnee’s fault.” It is consequently evident, that the same opinion has been entertained by CHANDÉSWARA.

“By the actual possession of a pledge, the validity of the contract is maintained” (XCVI). The sense is, by actual possession only of a pledge is the validity of the contract maintained; for the text coincides with those of VYÁSA and VRĪHASPATI. Consequently, if it be neglected, there is no possession of the pledge, as
already

already explained. Hence, if a creditor having lost one pledge demand another; or if he attempt to seize a pledge saved by the debtor, who interfered when loss impended through *the creditor's* neglect; in such cases the creditor shall not obtain the pledge. So much is declared. Yet, if the creditor did not neglect the pledge, but it be spoiled by the act of GOD, another pledge should be delivered. This the Sage declares; "if it be spoiled, though carefully kept, &c." (XCVI). Spoiled is there illustrative of detriment.

CXXVIII.

CÁTYÁYANA:—Should a man hypothecate the same thing to two creditors, what must be decided? The first hypothecation shall be established; and the debtor shall be punished as for theft.

"Decided;" ruled.

The *Retnácara*.

Consequently the last hypothecation is not valid: and this supposes that both mortgagees have obtained possession; if either or both have not obtained possession, the hypothecation to him who obtains not possession is invalid, as above mentioned. Both may have obtained possession of the same thing: for instance, one has had possession for a few days; afterwards the other, disseising him by force or fraud, possesses the thing a few days. Again; the thing is possessed by one through force or the like, but the other disseises him; in this case, the attempt to take possession on the part of him who disseises the other, is well argued to be a *sufficient act* of occupancy: where neglect is declared a cause of invalidating the mortgage, there, if the claimant, long attempting but not obtaining possession, has been content, it is *considered as* neglect.

"The debtor shall be punished as for theft:" for pledging the same thing to two persons, the pledger shall be punished as for theft. VISHNU expressly declares it.

CXXIX.

VISHNU:—He who has mortgaged even a bull's
 VOL. I. P hide

hide of land to one creditor, and, without having redeemed it, mortgages it to another, shall be corporally punished *by whipping or imprisonment*; if the quantity be less, he shall pay a fine of sixteen *suvernas*.

“ Even a bull’s hide of land ;” land to the quantity of a bull’s hide. The definition of a bull’s hide will be cited further on. If he *twice* mortgage a less quantity than that, he shall be fined in sixteen *suvernas*. On a cursory view there seems disparity in the punishments, by corporal chastisement, and by a fine of sixteen *suvernas*. This it would be proper to examine under the title of Fines; *it must be here unnoticed*, for what would avail a misplaced discussion vainly swelling the book?

The last hypothecation is invalid, according to MISRA, BHAVADÉVA, and others; herein the *Retnâcara*, *Pârijâta*, *Smṛiti sâra* and other works concur. Punishment only is shown by the text of VISHNU, the invalidity of the last hypothecation is inferred as a consequence. If the last hypothecation were valid, the first would be certainly void; for one contract must avoid: consequently the words “ without having redeemed it ” are pertinent. The first mortgage therefore, not being redeemed, is valid; and hence it follows, that the last mortgage is void. But some think the validity of the last hypothecation implied in the punishment of the debtor. This and other *deviations* are liable to objection.

The text concerns land alone.

BHAVADÉVA.

MISRA and BHAVADÉVA read “ land exceeding *the quantity of a bull’s hide only*.” MISRA remarks, that the sale of it without ownership is prevented. VISHNU explains the quantity of a bull’s hide.

CXXX.

VISHNU:—That land, whether little or much, on the produce of which one man can subsist for a year, is called the quantity of a bull’s hide.

“ Little

“ Little or much ;” if the land be excellent, and very productive, one man may subsist for a year on the produce of a small quantity of land, and the value of that land is great : but if its produce be small, a greater quantity of land is *requisite for such maintenance of one man*. Consequently the value of such less quantity of *fertile* land, and greater quantity of land *not fertile*, is the same. They are equal in value, and the punishment should be determined by the value of the land.

CXXXI.

Smṛiti, cited in the *Retnācara* :—If two men, to whom the same property has been pledged, enter into a contest, to him who has possessed the land it shall belong if no force were used.

The construction is, “ who has possessed the land without using force.” The text must be supplied, “ that land shall belong to him.” The *Retnācara*.

If the same property have been mortgaged to two persons, and the pledge have been given to one before the other, but one has possession and the other has not possession, the pledge belongs to him only who has possession, not to him who has not possession, even though he be the first mortgagee ; for a pledge is invalid without possession, as has been already stated. Ultimately, this text bears the same import ; but there is no vain repetition, since both texts were not delivered by the same legislator, VRI-
SHASPATI.

HELÁYUDHA, VÁCHESPATI, BHAVADÉVA and others read, “ he who has possessed it shall prevail ” (*yasya bhuṭtirjayastasya*). That reading is also admitted by CHANDÉSWARA, but he has quoted the other reading (*yasya bhuṭtirbhuvastasya*).

If the same property be mortgaged to two persons, and be possessed by both of them, what should be the decision in that case ?

CXXXII.

VRIHASPATI :—If one field have been mortgaged
P 2 to

to two creditors, *so* nearly at the same time that no *priority can be proved*, it shall belong to that mortgagee by whom it was first possessed *without force*.

“ Nearly at the same time,” so that it cannot be known which was first and which last.

By both these texts it is declared, that of two mortgages, in which no priority of time can be ascertained, that mortgage is valid under which possession has been *first* obtained without force.

The *Retnâcara*.

The meaning is this: if the witnesses be living and depose, “ through accident the creditor does not enjoy the thing mortgaged to him ; there is no neglect on the part of any person, but we do not remember when it was mortgaged to the creditors respectively ;” and if the writings have been accidentally lost, this text governs the decision of such a doubtful case. Again ; a tree has been pledged with its fruit at the same time *to two creditors* by some man *in person* or through his son, and debts have been contracted with two persons ; one of those creditors has enjoyed the produce of the tree, but the other has delayed occupancy to display his own generosity, and the parties are not aware of each other’s loan and occupancy ; in such a case also, the mortgage is valid in favour of him who first obtained possession. In this case there is no question on the priority of hypothecation ; but if the witnesses prove that it was first pledged to one creditor, though last possessed by him, and there has been no neglect on the part of any one, that pledge belongs to him to whom it was first hypothecated. This, however, is not the purport of the present text. Should a thing be first mortgaged to one creditor but neglected by him, and be afterwards mortgaged to another creditor and possessed by him, and the first creditor claim possession at a subsequent time, in that case the pledge belongs to him by whom it was first possessed, though he be the last creditor. This and other points may be reasoned.

If the priority both of mortgage and possession be doubtful, a text cited in the *Retnâcara* and *Vivâda Chintâmeni* directs the decision of the case.

CXXXIII.

Smṛiti :—By two creditors claiming the pledge *on the grounds of possession* for an equal time, it shall be shared equally ; and the same rule is declared in the cases of a gift and a sale.

The pledge shall be equally taken, that is, in equal shares, by both mortgagees ; and their shares shall be proportioned to the amount of their respective loans. For example : the first debt amounts to a hundred *suvernas*, the other debt to fifty *suvernas*, and the mortgage consists of one village ; in that case, since a partition must be made between the two creditors, therefore dividing the land *or rent* of the village in equal portions with the debts due to those creditors, shares should be given to each in proportion to their respective debts : and this supposes debts of the same nature ; but if they be of various natures, the amount must be computed from the value which the things bore at the time when the debts were contracted.

In the *Vivāda Chintāmeni* the text is read, “ if both have possessed it quietly for an equal time, it shall remain in their joint possession.” BHAVADÉVA concurs in this reading.

And this is nearly *but not strictly positive*. When seen proof, *or evidence*, in favour of both parties is equal, a decision may be grounded on unseen proof, *or mental conviction*. MISRA.

If the seen proof, that is wordly or popular proof, such as possession or the like, by which, in a case of dispute, the matter might be determined in favour of one party, be equal, a decision may be grounded on unseen argument, *or due consideration of the credibility of the evidence*. When therefore the priority of mortgage and possession is doubtful, a decision should be formed on consideration *of circumstances*. If the rights of both be on any account undistinguishable, equal shares should be assigned : and this is almost expressly declared. Such is MISRA's meaning. BHAVADÉVA concurs in that opinion : and it is reasonable ; for suits should be decided by the king with due consideration of the course of things. But that is a remote affair, which cannot be ascertained by the king ; Sages have therefore delivered a rule of decision.

decision. Yet, if any one can ascertain the matter through investigation guided by profound justice, why should recourse be had to equal participation or the like?

“In the case of a gift;” if one thing be given to two persons, the same rule of decision, according to actual possession, is declared in that case also by a text which will be quoted (“*even in immoveable property a title is gained by long possession, and lost by silent neglect*”). The same decision should also be given in the case of a sale; for there is no difference in the divestiture of property by gift or sale. But when the same thing has been sold to two persons, and priority of time being proved, one of them is entitled to the thing, and the other not entitled to it; he who does not obtain the commodity sold, shall recover the price from the seller: if both are entitled to receive shares of the commodity sold, half the price paid by him and half the commodity shall be the share of one, and the other half of the commodity with half the price shall be the share of the other. This shall be considered as the rule of decision.

If both equally have, or have not, possessed the thing, and there have been no neglect on either part, and the priority of mortgage be doubtful, a text of law, cited in the *Retnācara*, propounds a decision on the disparity of written and verbal evidence.

CXXXIV.

Smṛiti†:—If a pledge, a sale, or a gift of the same thing be *alleged to be* made before witnesses to *one man*, and by a written instrument to *another*, the writing shall prevail *over the oral testimony*, because one contract only is maintained.

If one contract be attested by witnesses, and the other be authenticated by an attested writing, the attested writing shall prevail; that is, it shall establish the mortgage. “Because one contract only is maintained;” because the contract with one man only is maintained by the writing produced. The *Retnācara*.

Conse-

* Attributed to VRĪHASPATI. See Book V. v. 384.

† Attributed to VRĪHASPATI.

Consequently the joint evidence of a writing and witnesses is exclusive, and verbal evidence singly must be excluded, because one contract only is maintained in consequence of the writing produced. A pledge has been given before witnesses to one man, and with a written instrument to another, but both have possessed the thing; after a few days a contest arising thereon, the pledge authenticated by a writing is alone valid. The text (CXXXIV) is considered in the *Retnâcara* as conveying that sense. Again; the owner has delivered a pledge to one man with an instrument in his own hand-writing, unattested, but not extorted by force, and to another before witnesses; even there also the writing shall prevail. The reason of it is, that the depositions of witnesses may possibly be false.

But HELÂYUDHA says, if there be no occupancy, but a writing exist duly attested and so forth, the writing shall prevail, because it is the best evidence of a transaction; it shall establish the mortgage. It is hereby intimated, that, if there be written and verbal evidence, a mortgage is not of course invalid for want of occupancy. That opinion is not admitted in the *Retnâcara*, for it is incompatible with the text of VRĪHASPATI (CXXVI). Yet, in fact, this text is an answer to him who should affirm, on a hasty consideration of the text of VRĪHASPATI, that a pledge is invalid for want of possession, in a case where the thing has not been possessed, but where no neglect is imputable to the pledgee. For instance, where a pledge or other contract has been made by an attested written instrument, the writing shall prevail; that is, it shall establish the mortgage. Such is HELÂYUDHA's meaning, and that should be considered as admitted in the *Retnâcara*, as has been already stated more than once.

A pledge is only lost under the text, "a house and the rest are destroyed by neglect, &c." (CXXVII). Forfeiture of property by silent neglect occurs in cases of gift and the like. So in the present case also, the pledgee is prevented from obtaining possession in consequence only of his silent neglect. Else, we think, a gift made for the benefit of the donee under the text concerning gifts, "in his mind intending the donee, let him cast water on the ground;" would be void, if the donee, through ignorance, did not immediately take possession.

This must be understood of two contracts of the same nature.

But for contracts of various natures opposed *to each other*, the rule of decision will be delivered under the title of Relative Force of Contracts.

If neither party have decisive possession, and no neglect be imputable to either party, but both have writings, and those writings be attested, the following texts of law, cited in the *Retnācara*, propound a special decision.

CXXXV.

*Smṛiti**:—But if a man first mortgage land without noticing all *circumstances*, and afterwards mortgage it with express description by name *and the like*, that writing which contains an express distinction shall prevail.

2. If a field, or a house, be described in a written instrument by its limits, and if villages and the like be *so* described, the contract is valid.

3. When a distinction is expressed in a writing to one man, and no distinction to another, the express distinction, says CĀTYĀYANA, shall preponderate.

In the first text it is ordained, that, if a writing be delivered to the first creditor in this form, “ I mortgage so much land to thee, and receive a loan of a hundred *suvernas* ;” and if it be mortgaged to the last creditor by a writing in the form directed by YĀJNYAWALKYA as above mentioned, inserting the name of the lender and of the borrower, and so forth ; then the mortgage is valid in favour of the last creditor.

The sense of the second text is this : if a written instrument, specifying the limits, be delivered to one man in this form, “ this field measured by four hundred cubits, and extending east and west from such a pond to such a mango tree, and north and south from the land of such a person to such a river, is mortgaged

* Attributed to CĀTYĀYANA.

gaged to you ;” and if it be mortgaged to another by a writing in this form, “ this field is mortgaged to you ;” the field conveyed by the instrument which specifies the limits acquires validity, that is, it becomes a valid pledge : and so of a house, a village, or the like. Or “ villages and the like ” may be thus expounded : the creditor’s village ; the village in which the creditor resides, occupying a dwelling-house, land, and the like : that in which the debtor resides ; and that in which the field is situated : if those villages be described. Under the words “ and the like ” are comprehended the names of fathers and so forth as directed by YÁJNYAWALCYA, and all other particulars of places and the like as required by local usage.

By the third text this meaning is denoted : to one man the mortgager delivers a written instrument in this form, “ the land “ situated in such a village, extending from such a boundary to “ such a boundary, and belonging to me YAJNYADATTA, is “ mortgaged to thee DÉVADATTA ;” to another he mortgages land in another form, “ this is addressed to CHAITRA ; the field “ belonging to me YAJNYADATTA, situated in such a village, “ extending from such a boundary to such a boundary, and which “ was obtained by favour of the king, in consequence of great “ services rendered to him, is mortgaged to thee ;” a distinction being thus expressed, that is, the land being thus particularly described, the writing which contains an express distinction, specifying the land obtained by favour of the king, shall preponderate ; resisting the other mortgage, it shall maintain the mortgage it conveys. Or the third text may be considered as intended to enforce the sense of the former texts.

From the expression “ preponderate ” it follows, that the other is not preferable. Consequently, when there is no contradiction, but one instrument only expresses the name, boundaries and other distinctions, the *other* instrument is sufficient evidence, if the limits and other particulars can be ascertained in any other mode. This is also admitted by CHANDÉSWARA, for he delivers this gloss, “ under these texts, if the mortgage be made to one man in a general form, and the same thing described by name be mortgaged to another ; then, if the contracts be incompatible, that which expresses a name and other distinctions shall prevail.” If such were not his meaning, he would not have added “ if the contracts

contracts be incompatible ;" he would have only said, the mortgage not described by name and other distinctions shall not prevail. This we hold reasonable.

Occupancy prevails over verbal and written evidence ; but, if possession be equal, the decision must be argued from the disparity of the writings. If these also be equal, participation is reasonable. No one has directed a decision on the disparity of verbal evidence. In support of these opinions, it is proper to adduce the text above cited (CXXXIII).

All this is enjoined, *but not inflexibly*. Through ignorance or the like, the writing has been delivered to the first creditor in some *irregular* form, and he has not silently neglected the pledge ; if all the circumstances be fully ascertained by the king or arbitrators from the evidence of neighbours, and if a writing in due form agreeable to law and usage were delivered to the last creditor, still it is argued by such men as we are, that the hypothecation to the first creditor is valid ; for these texts of Sages are rules of civil law. Accordingly, after citing the text (CXXXIII), MISRA adds, this is enjoined, *but admits exceptions*.

If a mortgage deed, *irregularly* drawn by a person inexperienced in such affairs, should happen not to be otherwise proved authentick, the mortgage deed in favour of a crafty person might prevail ; would not failure of justice be therefore imputable to the king for an untrue decision, *though* grounded on a legal rule ? None could be imputed ; such a decision is the consequence of particular circumstances. When the day, lunar asterism, and sign, in which a man was born, are unknown to astrologers, as the purpose is accomplished by assuming the sign from the first syllable of his familiar appellation ; (for instance, À and LÁ suggest the constellation of the Ram ; and so forth*:) so there is no failure of justice in *resorting* to this *expedient in a doubtful case*. However, after much investigation, throwing the load on the supreme ruler, a decision should be made with due consideration of the *general* conduct of both parties. Accordingly *the author*
of

* In drawing the horoscope of an infant, the lunar asterism under which he was born guides the selection of his name ; for instance, if he was born under *Aswini*, a name is selected beginning with CHA, CHE', CHO', or LA. But in drawing the horoscope of a man, whose birth-day is unascertained, the name suggests the constellation.

of the *Retnâcara*, citing the following text (CXXXVI), and expounding it, “if a man, mentally intending a particular thing, pledge his property not exhibited, nor precisely described, and consequently as imperceptible as the subtile element, it shall not be considered as a definite pledge;” adds, this is made evident by the subsequent text (CXXXVII): and if indefinite hypothecation be practised in certain instances, possession may be granted by a special rule without *valid* hypothecation.

CXXXVI.

Uncertain :—If a man pledge his property unexhibited, and undescribed as to its nature, and consequently imperceptible like the subtile element, that shall not be considered as a definite pledge.

CXXXVII.

Uncertain :—Whatever then belonged to that *debtor*, the creditor may suppose described *by the contract*.

Some explain the term, ‘unknown,’ *instead of* “*unexhibited*,” justifying the interpretation from the sense of the verb *vid*, know: that thing, which, being undescribed as to its nature, is not known or ascertained. It is not certainly described by its limits, the village in which it is situated, and other distinctions; it is therefore similar to the subtile element, equally invisible and imperceptible; and consequently shall not be considered as *sufficiently* definite. *For example*; “a field measured by a hundred cubits is mortgaged to CHAITRA;” it is not thereby particularly known where and of what description that field is. How should a man so mortgage land? The commentator explains it; “mentally intending *a particular field*,” indicating it by a general description, but not actually showing it. “Whatever then belonged to him” (CXXXVII); whatever belonged to the debtor at the time of making the hypothecation, might, through excess of confidence, or unguarded ignorance, be supposed by the creditor

ditor *pledged to him*. Whatever the creditor therefore occupied as the intended pledge, would be merely held under the authority of practice, to maintain the agreement inviolate. They thus expound the gloss of the *Retnâcara*, “If indefinite hypothecation, &c.”

CXXXVIII.

Smṛiti, * cited in the *Retnâcara* :—Should the creditor, against or even without the assent of his debtor, possess himself of more *land or other* property than was expressly mortgaged, he shall pay the first amercement, and the debtor shall receive back his whole pledge.

When a field measured by four hundred cubits has been mortgaged, should the creditor annex to it another adjoining field, and forcibly possess himself of it, that creditor shall pay the first amercement, namely, the amercement first directed, which MENU thus propounds, “Now two hundred and fifty *panas* are declared to be the first *or lowest* amercement.” To explain the sense of the text, this observation is made respecting fines. CHANDÉSWARA thus comments on the text; “if the creditor forcibly annex to the pledge more land or other property than was expressly mortgaged, and possess himself of it, he shall be fined, and the mortgager shall receive back the land or other property mortgaged, without paying the sum due.”

Consequently the debt, though lent by the party himself, is forfeited by reason of an offence consisting in encroachment on land exceeding the mortgage. But the debtor shall not receive the value of what has been previously obtained by enjoyment, since no text ordains it. Yet, if the debt be not discharged from the use of more land than was mortgaged, the mortgager shall *nevertheless* recover his pledge without discharging the debt; else the terms of the text, “the debtor shall receive back his whole pledge,” would be unmeaning.

Here it should be remarked, that if a loan be obtained on this condition,

* Attributed to CA'TYA'YANA.

condition, proposed by the borrower to the lender, "be this field pledged to thee; the pledge shall be redeemed after four years, on the seventh day of the month of *Bhâdra*: if I do not then redeem it, the pledge shall become thy absolute property;" the mortgage is not usually foreclosed, even though the debtor fail in his agreement. If a covetous creditor, reflecting on this local usage, say, "give a bill of sale;" and a necessitous borrower, to obtain the loan, execute a bill of sale, but insert as a date the future month and year intended by him, and specify in writing that the price received shall bear interest to that time; and if the debtor occupy the land until the stipulated period expire; is a contract in this form a mortgage or not? It is answered, since a bill of sale is executed, it is a sale and not a mortgage. Does the sale take place immediately, or on the future day specified in the writing? Not immediately: for, if the sale took place immediately, the debtor could not repay the price borrowed, and recover his pledge on a subsequent day. Nor can that be deemed admissible; for it would be inconsistent with practice. Neither is the second supposition true; for, since the vender does not intend an immediate sale, his property is not divested. Nor should it be affirmed, that the vender must intend a sale on the day when the writing is executed; for the borrower cannot be supposed to consent to a sale inconsistent with his purpose. On this point it is said, the sale is concluded on that very day when the vender receives the price; but property is not immediately divested. Yet the period, contemplated in the vender's actual intention at the time of the contract, divests the property of the original owner. Or the promise of a future sale is clearly conveyed by the writing then executed; and the borrower, consequently bound by his agreement, must consent to the sale; else he would be punished, and held guilty of a moral offence. Therefore do good men execute such bills of sale.

On this a question arises: if the contract were executed when four thousand years of the *Calî*-age were expired, and dated in the four thousand and fifth year; should the borrower or witnesses die in the interval, the writing being insufficient evidence, the money lent might be irrecoverable; and how could a mortgage of the land be alleged? That should not therefore be practised. Yet, in fact, since many excellent persons do so proceed,

arbitrators by some means admit the writing, because such current practice is remarked. But, if the writing be fully proved, it is a valid bill of sale. Should the borrower or his son be unable to discharge the debt in the interval, the sale must be acknowledged by the son, because it was promised by his father. Else he would be guilty of a great offence in violating his father's engagement : and the king should animadvert on it. But, if he can discharge the debt within the period, the sale is not valid ; for the borrower then assented to the divestiture of property, concomitant with failure in payment of the debt.

If a borrower execute a mortgage deed for a limited time, and also a bill of sale dated on a future day, there would be no difficulty in recovering the money lent. This is remarked on the prescriptive usage of good men ; but it has not been expressly noticed by any author. On the contrary, if a pledge be given upon this condition, " should the debt be undischarged on a certain day, this pledge shall become thy absolute property," then, if the pledge be not redeemed, that pledge shall belong to the creditor as has been more than once declared, and that alone is suggested by the texts of Sages.

It may be here remarked, that when a loan is made on a pledge received, the pledgee should deliver a written acknowledgement to the debtor ; else the creditor, enjoying the pledge, might affirm, after a considerable lapse of time, " this has been possessed by me twenty years, and is solely mine." As a written contract relative to tillage is both given and received by the cultivator and landlord, *so should mutual agreements be delivered in this case also.* Accordingly " mutual " is specified in the text of VRĪHASPATI (XII). *

On

* The compiler takes occasion to relate an antient tale. A borrower, pledging a valuable vessel through the medium of his own servant, and executing a written instrument, contracted a debt. Afterwards, the servant being dead, the creditor told the debtor, who offered to redeem the pledge, " the pledge has been already redeemed by thy servant." In this contest the debtor was cast by many arbitrators. He afterwards truly represented the whole circumstances to a certain king, and that king understanding the case, called the creditor, and having listened to his narration, showed him great courtesy. The king, having assumed the character of a friend, took the man's ring under pretence of viewing it ; at that moment a servant of the king, previously instructed, announced to him that his mother called. Seemingly interrupted thereby, he retired to an inner apartment, taking the ring with

On the subject of pledges something remains to be said *. In fact a pledge delivered for use is a pledge to be used, and a pledge delivered for confidence only is a pledge for custody. The text of MENU (v. XCI) concerns a pledge for use; his text (v. LXXXVIII) must relate to a pledge for custody, since it expresses "without the consent of the owners;" his text (v. LXXXVII) regards a pledge for custody. Consequently, since the use and profit of the pledge is the only interest in the case of a pledge to be used, interest at the rate of an eightieth part is prohibited. Should a pledge for custody be used, the use of it not being forbidden by the owner, half the interest is forfeited; but if the use of it were forbidden, the whole interest shall be forfeited. The same meaning should be also attributed to the text of YÁJNYAWALCYA (LXXXIV): if a pledge for custody be used, the forfeiture of interest is equitable, since *the use of it* had not been allowed in place of interest; but if a beneficial pledge be used, there shall be no interest, that is, no interest at the rate of an eightieth part and the like. Since the single word "interest" may be connected with both phrases (LXXXIV), there is no objection to the admission of both meanings. Such is the opinion of CULLÚCABHATTA.

That chattel, from the use of which no loss arises, is a pledge which may be used; that is, one, the use of which causes no ill: for participles of this form signify what may be done without causing any ill; as in the example, "a priest and a king are never to be slighted." Any other pledge is a pledge to be kept, that is, one which must be kept or preserved. Hence 'SÚLA-PÁNI's gloss delivered in the *Dīpacalīcā* (where a pledge for custody

with him as it were by mistake. Thence he sent a servant with the ring to the creditor's steward: "Unless the vessel be instantly produced, thy master's life is forfeited, this ring is my token;" hearing this, the steward delivered the vessel to the messenger. Having received the vessel in the inner apartment, the king put betle in it, and called the debtor. He, attending and seeing the vessel, with downcast look said, "I have offended, my servant must have been dishonest; without my knowledge he has sold this vessel; else how could it be in thy possession?" The king, having ascertained the weight and value of the vessel by means of artists, imposed a fine on the creditor, delivered the pledge to the debtor, and directed payment of the debt to the creditor. If there had been a writing, adds the compiler, no such dispute could have existed.

* In the original, these remarks are subjoined to the last chapter on the Recovery of Debts.

custody is explained a pledge to be kept, such as clothes, ornaments or the like ; and a beneficial pledge is exemplified by an ox or the like ;) is fully justified : and the remark of CHANDESWARA, in his gloss on the rule of VISHNU (LXXXII), which restricts the word “pledge” to a pledge for custody only, is pertinent : else, since MENU (XCI) also declares, that there shall be no *other* interest when a beneficial pledge is used, the restriction of the term to a pledge for custody, as inferred by CHANDESWARA, would be irrelevant. Thus likewise the gloss of MISRA on the text of CĀTYĀYANA (LXXXIX) is fully justified, where, after observing, that in every case where the pledge is used against the will of the owner, the whole interest is forfeited ; and when a slave or the like, being pledged, is employed, half the interest, he adds, but if a pledge for custody be used, the whole interest shall be forfeited. Else, since it is reasonable that all *other* interest should be foregone, when a pledged slave or the like has been delivered for use, the forfeiture of half the interest would be irrelevant. But if such a slave or the like be delivered for confidence only, the pledge is for custody ; and if used, the whole interest shall be forfeited : and hence that explicit statement of the distinction arising from this text was proper.

This opinion of some lawyers appears correct : a debtor, borrowing five pieces of money, has pledged a copper caldron worth ten pieces ; the creditor uses it without, though not against, the assent of the owner, during five years from that date ; and the vessel is not thereby totally spoiled, but, being much worn, is reduced to half or a less portion of its original value : in such a case the forfeiture of half the interest *only* would be inconsistent with common sense. The law has been thus explained at large.

But others expound the phrase, “on its loss or destruction,” which occurs in the text of NĀREDA (LXXXI 3), ‘should the lender neglect the preservation of the pledge :’ consequently, should the care of the pledge be neglected by the creditor, and the pledge nevertheless be fortunately uninjured, still the interest is forfeited. For example ; a cow is pledged to a *Yavana* by a foolish debtor, and that ill disposed creditor of the *Yavana* race neither uses the cow, nor feeds her at his own house ; but that cow grazes night and day in the forest, and, being destined to a long life, survives ; not being bitten by a snake or the like, or
being

being bitten but cured by some traveller: in such a case, *the interest is forfeited*.

VIJNYÁNÉSWARA considers the text of MENU (v. XCI) as relating to a pledge delivered for use; and the text of YÁJNYAWALCYA (LXXXIV), and another text of MENU (v. LXXXVIII), as relating to a pledge not delivered for use. But if a pledge delivered for use be damaged, interest shall be forfeited, under the precept of YÁJNYAWALCYA, "nor any interest, if a pledge for use be damaged" (LXXXIV). "A pledge spoiled shall be made good;" if a pledge not delivered for use be damaged in a small degree or the like, it must be repaired, and thus restored in its former condition; should it have been used, interest shall be forfeited. If a pledge delivered for use be damaged in a small degree or the like, it must be repaired, and restored in its former condition; if it bore interest, that interest shall be forfeited. Should a pledge be utterly spoiled or destroyed, an equivalent must be given, or the price of the pledge must be paid, or the principal sum shall be forfeited.

CHAP. IV.

ON

SURETIES.

CXXXIX.

- CĀTYĀYANA:—Neither the master *of the lender*, nor his professed enemy, nor an agent of his master, nor a prisoner, nor a criminal amerced, nor one whose character is ambiguous,
2. Nor a coheir or joint-tenant *with either party*, nor an intimate friend, nor a pupil, nor a servant of the king, nor a religious anchoret,
 3. Nor a man *reputed* unable to pay the sum to the creditor, or a fine of equal amount to the king, nor one whose father is living, nor one who is guided solely by his own forward will,
 4. Nor a man who is not well known, should ever be accepted as a surety for any purpose.

A man confined by the king for some offence, becoming surety for another, might *afterwards* plead, “how can I enforce payment of the debt?” Or, *it may be objected*, how could he attend to that matter when contested? A prisoner therefore should not be accepted as a surety. “A criminal amerced;” that is, one on whom punishment impends: else, since almost every person may casually become liable to punishment, none could be accepted as sureties: but this criminal is refused because the fine impoverishes him, and he is therefore unable to make good the debt. Thus some interpret the text; but that is wrong, for the same sense is also conveyed by the words “a man unable to pay the

the sum to the creditor." Some again hold, that a criminal amerced is refused as a surety, through apprehension of his sinful misconduct. But, in fact, future impoverishment is suggested by the term explained "a criminal liable to amercement;" since he is not at present reduced to indigence, there is no vain repetition.

"One whose character is ambiguous;" so explained in the *Retnâcara*: that is, a man of ambiguous character. That gloss intends one whom honest men suspect to be ill disposed. If his evil disposition be ascertained, surely *he cannot be accepted as a sponsor*. Others expound the term, 'accused:' they suppose one whom any person arraigns in a public assembly, alleging that he is addicted to the use of intoxicating liquors.

"A coheir;" a joint-tenant with the creditor or debtor.

The *Retnâcara*:

The notion is this; if the creditor accept his own coparcener as a surety, does he not make himself surety? If he accept the debtor's coparcener as a surety, does he not make the debtor surety for himself? A text of *YĀJNYAWALKYA* to the same purport will be cited. "A friend" of the creditor *must not be accepted*, lest friendship be violated.

"Pupils," literally apprentices; disciples. The *Retnâcara*.

The reason is, lest affection be diverted. But the author of the *Mitâcsharâ* reads *atyantavâsinah* instead of *antênivâsinah*, and expounds it 'perpetual students in theology.'

"A servant of the king;" one employed by the king, his minister, and the rest. On the reading, "nor the king, nor one employed in his affairs," king is illustrative of a general sense: it would be superfluous for the king or his minister to become a surety; because the king, by *the nature of his trust*, is an *universal* surety; and his deputed minister or other officer is certainly so likewise; and a servant of the king should not be accepted as surety, lest he avail himself of his superior power. "Religious anchorets" should not be accepted as sureties, because they are venerable, and are not capable of civil transactions. The want of independent property is the objection against one whose father is living.

"One who is guided by his own will;" who is solely guided by his own forward will, and not by any consideration of circumstances;

stances : consequently his incapacity for civil affairs is the objection against him.

“ A man *reputed* unable to pay the sum to the creditor ;” if he be unable to pay the sum to the creditor, for what purpose should he be accepted as a surety ? “ Or a fine of equal amount to the king ;” if the creditor accept as a surety a man able to pay the sum to him, but unable *also* to pay a fine to the king ; then, should he become liable for a fine to the king in consequence of some offence, and be therefore unable to pay both sums, the creditor could not recover the whole sum from him : for this reason he should be refused. Thus some expound the text ; but in fact this text is not restricted to loans, for it expresses generally “ for any purpose.” Consequently, when a surety is required by the king, he should not accept one who is unable to pay a fine : and that is merely illustrative ; a man unable to produce the party, should not be accepted as surety for appearance and so forth. If a creditor accept as a surety “ one who is not well known,” then, after a lapse of a few days, when he has gone to another place, and the debtor has absconded, from whom could the creditor recover the sum ? The creditor should therefore accept, as a surety, none but a man who is well known.

He who becomes a substitute for another (*pratibhavati*), is a surety (*pratibhū*) or bondsman. By parity of reasoning, similar sureties should be required in other cases. Consequently, from the full sense of the law, he only should be accepted as a surety *for any purpose*, from whose suretiship no breach of respect, natural affection, or tender regard, need be apprehended ; and from whom, or from the debtor, the sum may be subsequently recovered.

CXL.

YÁJNYAWALCYA :—It is declared, that brethren, husband and wife, father and son, cannot become sureties for each other before partition, nor reciprocally lend *their joint property*, nor give evidence for each other *in matters relating to the common stock*.

Brothers

Brothers and the rest cannot, before partition, become bound to, or for each other, and so forth. Before partition, a man should not make a loan, taking as a surety his own brother, or the brother of the debtor: nor should he make a loan to his own undivided brother; for all that belongs to him belongs to his brother: how then can it be a debt? It will be declared, that his brother has no title to what is acquired by the man himself: may not therefore his own acquired wealth be lent to his brother? *The answer is*, why should his brother borrow money from him, since his food and other wants may be supplied from the joint estate? If he need it for religious occasions, why should he not use the joint property? *If he wish to adventure it* for increase of wealth, why should he not improve the joint estate? If he require it for the enjoyment of wreaths, sanders wood, fine cloth, and the like, that may be supplied out of joint property; for the law has not forbidden any use of common property.

But if any one resolve in his own mind, "I will perform a religious act on my own separate funds, and I alone shall obtain the benefit of it;" or if his brother forbid such expenditure of the paternal wealth; in such cases, a man intending to dig a pond, or to perform a solemn sacrifice, or the like, out of property acquired by himself, but *finding* some part of his own several property unavailable, may borrow from his brother money acquired by *that brother* himself: why is a loan forbidden before partition? It should not be objected, that a religious act, even though performed by one brother on funds acquired by himself, is the act of both undivided brothers, under a text which will be quoted (Book V, v. CCCLXXXVIII); and therefore money received for that purpose from a brother, even though it were acquired by himself, is no debt, and shall not therefore be repaid. Another text* declares the participation of all brethren in that religious act only which is performed, with the assent of all, on funds common to all; and the former text has virtually the same import.

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* A text of MARÍCHI is incorrectly cited in this place. After consulting the *Dwaita paris'ishta* of CÉSAVA, MISRA, and *Suddhi vivéca* of RUDRADHARA, I thus translate the text with the preceding verse: "The father being dead, his obsequies must be carefully performed by his son; but if there be many sons of the father residing in the same place, what is done by the eldest alone, with the assent of all, and out of the common stock, shall be *considered as* the act of all."

import. That a debt may be contracted with an undivided brother, cannot therefore be disputed.

Again : a man reflecting, " if I obtain profit on joint property, another brother will also have a title to that profit," only lends at interest his own property acquired by himself, or he conducts commerce on that capital ; in such a case, a small part of his several property being then unavailable, he borrows from his undivided brother money acquired by that brother himself : here, also, what should prevent him ? So if another brother tell one who dissipates the joint property for the enjoyment of wreaths, sanders wood, fine cloth, and the like, " gratify thy wish for enjoyment in proportion only to *thy share of the wealth*," and if he, being thereby restrained, supplies his enjoyments out of wealth acquired by himself ; but, some part of his several property being then unavailable, borrows from an undivided brother money acquired by that brother himself : here, again, what is there incongruous ? Consequently a debt contracted with an undivided brother for the three purposes of spiritual benefit, of wealth, and of gratification, is in reason valid.

Yet YÁJNYAWALCYA forbids it. Can such a rule be demonstratively true, that, under the text of YÁJNYAWALCYA, a debt may not be contracted with an undivided brother, though in reason such a debt be valid ? There is no objection to explain " while undivided," while the property *lent* is undivided : for the sense *must be this* ; paternal wealth and the like, and what has been gained by a common exertion, may not be borrowed from undivided brethren.

So, if a religious act or the like be undertaken on a man's own several property, and if a small sum be deficient, and a debt be therefore contracted with another person, an undivided brother may be his surety or his witness : but if he contract a debt for the maintenance of the united family, an undivided brother can neither be surety nor witness ; for he also is liable to the payment of the debt : and if this text be adduced by authors to guide the decision when a doubt arises whether a partition have been made, still that supposes either paternal wealth or property acquired in common. This will be discussed in the *fifth* book, On INHERITANCE, under the head of Ascertainment of Partition : and this text has the same import with that of CÁTAYANA (CXXXIX 2.)

CXXXIX 2.) "Nor a coheir or joint tenant," as has been already noticed.

There can be no partition between husband and wife (Book V. v. 89). The text of YÁJNYAWALCYA (Book V. v. 83) intends only a provision for subsistence, not partition: were there partition, wives would become independent, and it would contradict the text of `APASTAMBA (Book V. v. 89). Property therefore being common to husband and wife (Book V. v. 415), suretiship and the rest are forbidden, so far as concerns the general estate of the husband; but a contract of debt or suretiship may exist in respect of other wealth, such as the several property of a woman: for example, the husband may borrow from his wife her own several property. So if the wife desire to support her own brother or other kinsman out of her several property, and no part of that property be then available, a debt must be contracted; when that debt is therefore contracted with another person, her husband may become either surety or witness: for YÁJNYAWALCYA (CCVII) denies the absolute necessity of a husband paying such a debt. By the husband only, can no loan be made to his wife; for the text above cited (Book V. v. 415) declares the wife's property in the husband's wealth only. Such is the interpretation according to ancient authors.

But VÁCHESPATI BHATTÁCHÁRYA does not acknowledge the property of the wife in her husband's wealth. There is not, in his opinion, any objection to a gift made by her; however, he considers the husband and wife as never undivided in *respect of* property. This may be admitted; but the author of the *Mitácsharā* admits partition between husband and wife, and acknowledges the wife's property in her husband's whole estate; for, in his gloss on the text of `APASTAMBA above cited (Book V. v. 89) he says, "since MENU and the rest do not deem it a theft if she use her husband's property in the entertainment of guests and eleemosynary gifts, therefore the wife also has ownership of her husband's wealth: else it would be a theft." A partition may therefore be made at the option of the husband, but not at the option of the wife; as will be mentioned (Book V. Chap. ii). The wife's property in her husband's estate is thus shown (Book V. v. 83); partition *in general* is not again denied: and the text, which does deny partition, is expounded as relating to acts

which concern the nuptial fire and the like. But RAGHUNANDANA says, "The legislator mentions partition between husband and wife, intending the assignment of an equal share with the sons, by way of provision for the wife's maintenance: if that have not been done, testimony for each other and so forth is forbidden."

CXLI.

NĀREDA :—After partition, but not before it, brothers may become witnesses or sureties for each other, and may reciprocally give and receive *presents*, or *make contracts with each other*: but in regard to property separately acquired, they may do so even before partition*.

They may give and receive loans, for the text coincides with that of YĀJNYAWALKYA (CXL). Since there is no ground for selection, both delivery and receipt are meant. Or if a man erroneously make a present, receipt is forbidden; if he erroneously take a present, gift was forbidden. If the prohibition of receipt be infringed, the benefit of a gift for a religious purpose is lost; if the prohibition of gift be infringed, the thing shall not be obtained at a subsequent time: hence both are intended.

Again; delivery and receipt may signify the delivery of a thing relinquished on a religious account, and the receipt of that thing. If that prohibition be infringed, what moral purity can he acquire by yielding joint property to one of the owners? Or how can the donee forfeit *his share* in the merit of the gift, by receiving his own property, which in reality produces moral benefit common to both owners? Such is the objection *to the interchange of presents between parceners*.

Under this text (CXLI) the attestation of brothers and so forth is only proper in matters concerning that property, in respect of which they are separate; and it is only improper in matters concerning that property, in respect of which they are coparceners.

If one allege in the king's court, "this man is my debtor," and the

* Book V. v. 388, 3.

the other affirm, "I am not his debtor;" that suit being tried, if three strangers depose to the debt, and seven parceners depose against the debt, the negative plea would prevail by the text of YÁJNYAWALCYA*: to prevent this *circumstance*, their testimony is forbidden. Therefore, setting aside the negative plea, though supported by the evidence of many parceners, the debt proved by strangers should be adjudged. "A kinsman might speak *falsely* through the impulse of natural affection." This and other points should be discussed under the title of Administration of Justice.

And that (which is stated in the text CXLI) *is forbidden* without mutual consent; but with mutual consent, even undivided brothers may become sureties and so forth: after partition, they may so act even without mutual consent. The *Mitácsharā*.

Sureties are of four sorts.

CXLII.

VRĪHASPATI:—Four sorts of sureties are mentioned by Sages in the system of jurisprudence: for appearance, for honesty, for paying a sum lent, and for delivering the debtor's effects.

2. The first says, "I will produce that man;" the second says, "that man is trust-worthy;" the third says, "I will pay the debt;" the fourth says, "I will deliver his effects."
3. On failure of their engagement, the two first, *but not their sons*, must pay the sum lent at the time stipulated; the two last, on default of *the borrowers*, and even their sons, if they die *and leave assets*.

The construction is, four sorts of sureties are mentioned in the system of jurisprudence. The first for appearance, that is, for

* The text at large stands thus in the code of that legislator: "If the evidence be discordant, the testimony of the greater number shall prevail; if the witnesses be equal in number, the testimony of the virtuous; if virtuous men depose two inconsistent facts, the testimony of those who are most eminent by their honesty."

for producing the party ; in short, he is surety for appearance. So likewise in respect of sureties for honesty and for payment. " For delivery of the debtor's effects ;" for delivery of his assets to the creditor. The *Retnâcara*.

Thus the creditor says, " he will not repay my loan, for he is dishonest ; who will obtain the money from him and pay it to me ? " In reply, the surety for producing the debtor's assets says, " I will deliver his assets." In the subsequent verse, *the terms*, " I will deliver his effects," are expounded " I will deliver assets of that debtor equal to the sum lent," that is, effects sufficient for the purpose of payment.

But modern authors expound it, surety for the delivery of the debtor's mortgaged property. For instance : the borrower contracts a debt on the mortgage of a field, and the creditor asks " who will deliver to me the produce of that field ? " In such a case, the surety for the delivery of the debtor's effects says, " I will deliver his property ;" that is, the property of this debtor, namely the produce of the mortgaged field. MISRA.

MISRA contends for another reading, *rîṇē dravyârpanē* instead of *rîṇi dravyârpanē*. It is explained, for restoring a thing lent to be used. A thing lent for use is any thing which a man asks and obtains from another, such as ornaments and the like. For instance : one says, " give me ornaments for decoration on a day of festivity at my house ;" the owner asks, " if thou do not restore them, what shall be done ? " In such a case, the surety for delivery says, " I will restore these effects." Here, since those ornaments are the sole property of the original owner, there can be no payment ; it is therefore said for delivery or restoration. Consequently sureties for appearance and honesty may concern a loan for use as well as for consumption : in respect of a debt there is also a surety for payment ; and in respect of loans for use, there is also a surety for restoring the chattel. In cases of debt, therefore, sureties are of three sorts ; and there are also three sorts of surety for restoring a chattel : but generally sureties are of four sorts. This gloss is consistent with the sense of the text.

On this we remark, that *rîṇē* is a reading approved by 'SÚLA-PÁNI. The construction is, " in respect of debts, four sorts of sureties are mentioned," When an artist is required by the king for

for service during a long space of time, there are only three sorts of sureties for him ; a surety for appearance, a surety for honesty, and a surety for work. In some instances sureties are of five sorts, as will be mentioned. But in matters of debt there are only four sorts of surety. The meaning of " surety for delivery of effects," must be explained according to the modern interpretation, or according to the preceding gloss.

Here an observation should be made in regard to what has been already noticed in the discussion of Loans secured by a Pledge. Some person lends money to a servant, being told by his master, " I will not pay my servant's wages unknown to you." It has been said, that in such a case the servant's master becomes a surety ; and, according to the modern interpretation and the last gloss, he is only surety for delivery ; but according to other opinions he is surety for honesty. As a creditor, relying on some person's affirmation, " this man is trust-worthy," lends money to the borrower ; so, *in this instance*, he lends money to a borrower in confidence of recovering the sum from him, relying on the promise, " I will not pay his wages unknown to you." The servant's master shall therefore be compelled to pay the debt, if he falsify his word. But he shall only be compelled to pay the amount of the wages, and not the whole debt if it exceed the wages ; for the servant's master only became surety for a debt equal to the wages.

The second says, " that man is trust-worthy " (CXLII 2) ; this form is merely illustrative, as has been already noticed. " The two first must pay the sum lent on failure of their engagement " (CXLII 3) ; the two first, the surety for appearance and the surety for honesty, must pay it on failure of their engagement, that is, should the words uttered by them prove untrue. For example : if the surety who said " I will produce that man," do not produce him, he must pay the debt. So the surety for honesty, who said " that man is trust-worthy ; he is honest and will not be averse from discharging the debt ;" or, " he will not take refuge with thy professed enemy ;" must pay the debt, if it be proved that the debtor evades the payment of the debt, is dishonest, or has taken refuge with a professed enemy of the creditor. The same must be understood with respect to the master's servant in the case supposed.

The surety for honesty is belied when the debtor does not pay
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the debt, and that surety must therefore make it good. It is the same in the case of a surety for payment. Does it not follow, that there is no difference between a surety for honesty and a surety for payment? No; they differ in many points. If the surety said, "that man is honest;" and afterwards, if the debtor, being reduced to indigence by conflagration, by the depredations of robbers, or the like, have no assets whatever for the payment of his debts, his honesty is unimpeached; for *in such circumstances* there is no sin in his not discharging the debt: the surety for honesty shall not in this case be compelled to pay the debt. But if the surety say, "I will pay the debt," then indeed that surety for payment shall be compelled to pay it. Such is the difference. Again; if the surety for honesty say, "that man is wealthy," in such a case, should it be proved that he was then indigent, the surety for honesty or trust shall pay the debt, even though the inability of the debtor be the cause of its remaining undischarged *by him*. But if wealthiness be proved, and the debtor withhold payment through dishonesty or the like, a surety for payment would in that case be compelled to discharge the debt, not the surety for trust. This also constitutes a difference. There is again a difference in the case of the debtor's decease; and various distinctions may also be deduced from other circumstances.

In fact, when the surety for honesty says, "that man is trustworthy;" if he punctually paid debts formerly contracted from others without dispute, and never did a dishonest act, but subsequently practise knavery in regard to the payment of this debt, the surety is not in that case amenable; for none can know future events. But, when the surety for honesty says, "that man will practise no knavery; of this I am well assured; confiding in my words, lend him the money without hesitation;" then indeed, should the debtor afterwards practise knavery, the foolish surety must pay the debt. If a surety affirm, that a dishonest borrower is honest, then this surety for honesty is belied and must pay the debt. Providing for this case, the text of VRĪHASPATI expresses, "the two first must pay the sum lent."

"At the time stipulated" (CXLII); at the term, as stipulated *by the debtor*. For example; when the debtor promised, "I will discharge the debt in such a year and month, on such a day," it must be paid on that very day in that month and year.

“The two last (the surety for payment and the surety for delivery), on default ;” *they shall be compelled to fulfil their engagements*, if they do not spontaneously pay the debt, or deliver the effects. The *Retnâcara*.

Here, “at the stipulated term” must be supplied after the words “pay the debt.”

“If they be dead ;” literally, without them : on failure of the surety for payment and of the surety for delivery, in consequence of their death, absence, or religious seclusion from the world. Consequently, should a surety for appearance or honesty die or go to a foreign country, his son is not bound ; but if a surety for payment or delivery die or go to a foreign country, his son is held bound.

It should be here noticed, that, so long as the surety for appearance or honesty be forthcoming, the debt is secured by a surety, and bears interest at the rate of an eightieth part increased by an eighth (XXVII). If they die, or go to a foreign country whence their return cannot be expected, the debts are thenceforward unsecured by pledge or surety, and bear interest at the rate of two in the hundred. But the grandson of a surety for payment or for delivery is not bound *by his grandfather's engagements*, as will be mentioned.

CXLIII.

NĀREDA :—Three sorts of sureties, for three purposes, are mentioned by the wise ; for appearance, for payment, and for honesty :

2. If the debtors fail in their engagements, or if *his* confidence misled *the creditor*, the surety must pay the debt ; and so *must the surety for appearance*, if he do not produce *the debtor*.

For three purposes in respect of things, namely for payment, appearance, and honesty, three sorts of sureties are mentioned. What is to be done by them ? The Sage declares it (CXLIII 2). “If the debtors fail in their engagements,” if they do not discharge

charge the debt, "the surety," namely the surety for payment, must pay the debt. "If *his* confidence misled *the creditor*;" that whereby a man confides, is confidence. If what is meant by that term, namely the confidence of the surety for honesty, produce incongruity, or excite an erroneous notion, (for the word has an inflection which bears a causal sense;) that is, if the assertion of the surety produce error, or in other words if it prove false, *he must pay the debt*. If the reading be *vibôdhitê* instead of *virôdhitê*, it must be thus explained; if confidence, or the notion excited by the assertion of the surety for honesty, be misconceived, or prove contrary to fact; that is, if it prove false; or, in short, if the debtor be dishonest; the surety, namely the surety for confidence, must pay the debt. Such is the meaning. "If he do not produce *the debtor in court*;" the text must be so supplied: if he do not compel the appearance of the debtor, the surety, namely the surety for appearance, must pay the debt.

But the surety for delivery is not here mentioned; in the text of NÁREDA, therefore, three sureties only are noticed. The apparent inconsistency is thus reconciled, according to MISRA; the text of NÁREDA concerns only sureties for debts, but the text of VRĪHASPATI concerns both loans for consumption and loans for use; there is not, consequently, any contradiction. But, according to others, the surety for delivery falls under the *general* description of surety for payment; for there is no *material* difference between a surety for the delivery of mortgaged property or of the debtor's assets, and one who has undertaken the payment of *the debt*: entertaining this notion, NÁREDA has only mentioned three sorts of sureties. Distinguishing this form of agreement, "if the debtor do not pay the debt, it shall be paid by me," from this form, "obtaining assets from the debtor, I will deliver them," or distinguishing the engagements to pay the money lent, and to deliver the property mortgaged, VRĪHASPATI has discriminated the surety for payment and surety for delivery: there is not consequently any inconsistency. In effect there is no difference of meaning. The text is cited by HELAYUDHA and CHANDÉSWARA, and is therefore inserted in this Digest, though not quoted by LACSHMID'HARA and others.

CXLIV.

YÁJNYAWALCYA:—Suretiship is ordained for appearance, for honesty, and for payment; the two first *sureties*, and not their sons, must pay the debt on failure of their engagements, but even the sons of the last *may be compelled to pay it*.

The two first, the surety for appearance and surety for honesty, must pay it on failure of their engagements. Even the sons of the surety for payment may be compelled to pay the debt.

The *Dípacalicá*.

Since the son of the surety for payment is alone declared liable for the debt, it appears that the son of a surety for appearance or for honesty is not liable for the debt. Herein the author of the *Mitâcsharâ* concurs: but he has delivered this gloss on the term “honesty” or trust; *the surety says*, “confiding in me, lend him the money; he will not deceive thee, for he is son of such a one; his land is very fertile; and he has an excellent estate:” and all other circumstances are *in this manner* almost fully particularized. That no real inconsistency with the text of VRĪHASPATI exists, has been already explained in the gloss on the text of NĀREDA.

CXLV.

CĀTYĀYANA:—*Let the king* cause sureties to be given for payment, for appearance, for confidence, *or for honesty*, for the matter in contest, and for ordeal; on failure of their engagements *they shall be liable* according to circumstances.

“For payment;” for the discharge of the debt, and for the delivery of mortgaged property and the like. “For appearance;” for producing the debtor. “For confidence;” for trust: the words are synonymous. “For the matter in contest”
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with the creditor. "For the performance of ordeal:" that surety shall be compelled to pay the debt "on failure of his engagement;" or, *in other words*, if the engagement be not performed. Such is the sense, as apprehended by CHANDÉSWARA.

"For the matter in contest;" a suit being instituted by the creditor for the recovery of money from the debtor, he whom the king takes as a surety, lest the debtor or creditor abscond through apprehension of losing the cause, is surety for the action, the fourth sort of surety, as *also directed* by a text which will be quoted from YÁJNYAWALCYA*. This surety says, "if that man do not appear to *defend* the suit, he shall be produced by me;" or he says, "I will perform what may be required from that man."

Afterwards, during the procedure, if ordeal must be performed by the party himself, he whom the king, under the text of YÁJNYAWALCYA, takes as a surety, suspecting the creditor's or debtor's wish to abscond, because he perceives the probable detection of his falsehood, is surety for ordeal, the fifth sort of surety. He says, "when this debtor should pass ordeal, I will then produce him;" or he says, "I will perform his office." This should be understood incidentally in the case of a surety for the creditor.

This text should be placed under the title of Administration of Justice. It carries an *apparent* inconsistency with the text of VRĪHASPATI, where four sorts of sureties are propounded. That may be reconciled: the text of VRĪHASPATI concerns debts alone, but the text of CÁTYÁYANA concerns law-suits in general; there is no contradiction. Or the sureties for the action and for ordeal fall under the description of sureties for appearance, distinguished, *however*, by the difference of agreement. Accordingly MISRA says, the surety for attending the decision of the suit, and for ordeal and the like, as mentioned by CÁTYÁYANA, is included in the surety for appearance and the rest.

According to the last interpretation *of the text of VRĪHASPATI*, consistent with the gloss of 'SÚLAPÁNI, "matters of debt"

* Not again cited in this Digest. I subjoin the translation according to the gloss of RAGHUNANDANA: "From both parties a surety must be taken, able to perform the decree *by paying the sum adjudged, and so forth.*"

debt" being there specified, the apparent contradiction is obviously reconciled in this mode: in matters of debt there are four sorts of sureties, but for law-suits *in general* there are five sorts. Some however hold, that when a suit is instituted, he who is appointed by the plaintiff or defendant, who is himself unable to act, to be his representative for the pursuit or defence, is surety for the action. By the nature of the undertaking, if he be cast, his principal is cast; and if he prevail *in the suit*, his principal prevails. The king should exact from the principal a written engagement in this form, "his success or defeat shall fall on me."

A written acknowledgment should be executed by sureties in their own handwriting, or in that of another person. In the margin of the written contract of debt, the surety may write, "I such a one, son of such a one, will produce unto thee such a one thy debtor, on a certain day, month, and year, (*specifying the time* when the debt ought to be discharged,) provided he have not paid the debt before that time; should I fail herein, I will myself discharge the debt with interest." A surety for confidence should execute a similar obligation, but call himself "surety for confidence," and after inserting the name of the borrower, and other particulars, conclude by declaring "that man is honest; if this assertion prove false, the debt shall be paid by me." So in the case of a surety for payment, for delivery, for the action, or for ordeal, the undertaking above mentioned should be duly recorded in writing. By the surety for the action, according to the last-mentioned opinion, an undertaking may be reduced to writing in this form, "I will answer the plea so long as the suit remain *undecided*." This and other points may be reasoned according to received practice.

That the debt, not being discharged by the debtor at the stipulated period, must be paid by the surety for payment, is evident from the expression "on failure of their engagements." A special rule is declared in respect of a surety for appearance.

CXLVI.

CÁTYÁYANA propounds it:—If a surety for the
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appearance of a debtor produce him not at the time and in the place *agreed on*, he shall discharge the debt, unless he was prevented by the act of God or the king.

2. After the time of *difficulty* has past, the surety, who still does not produce him, shall pay the debt; and the same law is declared, even if the debtor should die.

“ At the time and in the place ;” the surety for appearance having promised, “ I will produce the debtor at such a time and in such a place,” if he do not produce him at that time and in that place, becomes liable for the condition of the writing, namely, for the debt ; that is, he must pay the debt to the creditor : such is the sense of the first part of *the text* : and this was conveyed by a former text ; but a special rule is subjoined, “ unless he was prevented by the act of God or the king.” If the debtor abscond through fear of the king, in consequence of another’s fault, or if he go to another country, promising to return at the close of a month, but be detained by illness a year or more, the surety for appearance is not blameable for not producing the debtor.

“ After the time has past ;” after the king’s violence has past away, and so forth. After relief from *apprehension* of the king’s violence, or after his return to his home on recovery from sickness, if the surety still do not produce him, through dishonesty, inability, or the like, *the king* shall compel the surety to pay the debt. The text should be so supplied.

“ And the same law is declared, even if the debtor should die ;” that is, the surety must pay the debt. The *Retnâcara*.

This opinion, literally taken, is inconsistent with reason ; for favour is shown him if he be prevented by the act of God or the king, but none is shown in the case of death, which is the most absolute hindrance arising from the act of God. Its purport must therefore be assumed according to the exposition of VÁCHESPATI MISRA ; and that is meant in the *Retnâcara*. His exposition is as follows : when the time, at which the surety undertook to produce the debtor, has past without any hindrance from

from the act of GOD or the king; or, in the case of hindrance by the act of GOD or the king, after that *difficulty ceased*; if the surety still procrastinate, thinking, “ I am surety for appearance, and not bound for payment; I will produce the debtor two months hence, but at present I will attend to my own business;” in such a case, if the debtor afterwards die, the surety must pay the debt. Such is the sense of the phrase: and this is also the import of the text of VRĪHASPATI, “ on failure of their engagements, the two first must pay the sum lent ” (CXLII 3). MENU also declares, that the surety for appearance must himself pay the debt, if he do not produce the debtor.

CXLVII.

MENU :—The man who becomes surety for the appearance of a debtor in this world, and produces him not, shall pay the debt out of his own property.

Must dispose himself to pay the debt out of his own property.

CULLÚCABHATTA.

Here it should be observed, that when the agreement is simply this, “ I will produce or show the debtor at such a time,” and no place be specified; if he show him on that very day, while busied in holy worship or the like, or occupied with other affairs, and so forth, it might be supposed, on a cursory view, that the agreement is not violated: but we humbly think it reasonable to affirm, that in such a case the agreement is infringed; for the creditor requires the debtor to be produced at the time agreed on, that he may recover the sum lent; he requires him to be so produced, as may tend to the recovery of the money: this the surety undertakes to fulfil, and the terms of his engagement must be so understood; but it is not fulfilled by indicating *the debtor* at such a time, when he is not amenable: the surety must therefore show the debtor at a time when he is at leisure, *and amenable*. Such is the modern mode of interpretation.

A rule has been propounded for the case of a debtor abscond-

ing through the fault of another ; what is the rule if he abscond to evade payment of the debt ? On this point,

CXLVIII.

VRĪHASPATI declares :—Let the creditor allow time for the surety to search for the debtor who has absconded ; a fortnight, a month, or six weeks, according to the distance of the place *where he may be supposed to lurk* :

2. Let no sureties be excessively harassed ; let them gradually be compelled to pay the debt ; let them not be attacked if the debtor be at hand, *and amenable* : such is the law *in favour* of sureties.

“ For the debtor, who is missing, or has absconded ;” according to the literal sense of the verb *ñas*, be invisible, or not to be found. “ According to the distance of the place ;” according to the remote or near situation of the place, and so forth. “ Gradually :” without the consent of the surety, the whole sum shall not be at once exacted at the stipulated term. “ If the debtor be at hand ;” if he be present, or if he be willing to pay the debt, sureties must not be required to produce the debtor, or pay the debt.

In respect of a surety for honesty, a text of law cited in the *Retnācara* propounds a rule.

CXLIX.

Smṛiti:—From a malicious debtor, who is on any account disposed, through enmity, to take the protection of a stranger, *professedly hostile to his creditor*, or to do any thing inauspicious *to him*, or to adopt the conduct of wicked men,

2. Let a surety for honesty be taken *as a precaution* against such behaviour ; if his conduct belie the promise, his surety must pay the debt.

“ From

“From a malicious debtor, who is disposed, &c.”; whose mind is bent on taking the protection of a stranger, that is, of a professed enemy to the creditor; on doing any thing inauspicious to the creditor; or on adopting the conduct of wicked men, such as thieves and the like. Why should a debtor take the protection of his creditor’s antagonist? In reply to this, he adds, “through enmity:” lending his own money, the creditor confers a favour; when he demands his money, the malice of a wicked man is roused. This is obvious. The *Retnācara*.

“As a precaution against such behaviour;” lest he should take refuge with a professed enemy of the creditor, and so forth: let some person be taken as surety for honesty or confidence; that is, for the certainty that he will not seek the protection of a professed enemy, and so forth. Such is the sense of the first phrase. He is in reality surety for honesty. He says, “that man is honest, he will be ready to pay the debt, and will not take refuge with *thy* professed enemy.”

“If his conduct belie the promise;” if it be different from what was promised: taking the protection of the creditor’s enemy, if he discharge not the debt, the king shall compel the surety to pay the debt at the close of the stipulated term. Such is the sense of the last phrase: and this is also the import of VRĪHAS-PATI’s expression, “on failure of their engagements, the two first must pay the sum lent.”

On this *text* (CXLVIII) CHANDÉSWARA remarks, that “wherever confidence is wanting, the king should require a surety for confidence *or honesty* to be given.” Accordingly, if the creditor refuse the loan, apprehending the insolvency of the borrower, and some person affirm, “he is not insolvent;” and if the creditor, confiding in that assurance, lend the money; that person also is a surety for confidence, as has been already noticed. This and other points may be reasoned. Hence BHAVADÉVA has said, if it be affirmed by some person, “that man is not thy debtor, but some *other* honest man,” should it be afterwards proved by other evidence that he was the debtor, that cheat is *deemed* a surety. According to this opinion of BHAVADÉVA, it must be understood, that if a cheat, sent by the debtor, make such affirmation, he is only *deemed* a surety for confidence; but if he make that affirmation when questioned by the king or the

umpire, he is a perjured witness, and shall undergo the punishment of false testimony.

In law-suits there are three sorts of sureties; the representative of the party who pleads his suit; the surety for his appearance; and the surety for the sum which may be due from him. This and other points may be understood from popular *practice*. It has been almost expressly declared already, and should be further discussed under the title of Administration of Justice.

What should be done in the case of a surety for ordeal, CÁTYÁYANA declares,

CL.

CÁTYÁYANA :—At the time and place when the ceremony should be performed, if he fail in ever so small a degree, the surety shall be compelled to pay the sum as a just debt: such is the law respecting proved debts.

“When the ceremony should be performed;” when ordeal should be performed. The *Retnácara*.

The meaning is, that this concerns ordeal. If the surety for ordeal, having declared, “when ordeal shall take place, I will produce that man,” should pass that day, however inconsiderable the delay may be; if he delay it one watch, or even half a watch beyond the day appointed; the surety who entered into that engagement must pay the sum “as a just debt” proved to be due. So much has been delivered by way of commentary on the *preceding* text of CÁTYÁYANA (CXLV). MENU has delivered a text of the same import with the expression of VRĪHASPATI, “and even their sons if they be dead” (CLI 2).

“A surety for payment” (CLI 2); a surety who has formally declared, “I will pay *the debt*.” Since the text (CXLII) expresses, “even their sons if they be dead,” “heirs.” *may here signify sons* (CLI 2). The *Retnácara*,

Even the surety for delivery, mentioned by VRĪHASPATI, is considered by MENU as the same with the surety for payment. By specifying the surety for payment, he exempts the son of a surety
for

for appearance, or for honesty: and that has been expressly declared by MENU in the text which precedes the passage quoted.

CLI.

MENU:—But money due by a surety, or idly promised *to musicians and actresses*, or lost at play, or due for spirituous liquors, or what remains unpaid of a fine or toll, the son of the surety or debtor shall not *in general* be obliged to pay.

2. Such is the rule in case of a surety for appearance or good behaviour; but if a surety for payment should die, the judge may compel even his heirs to discharge the debt.

“Money due by a surety;” what was payable by a surety.

CULLÚCABHATTA.

Idle promises and the rest will be discussed in the chapter on Payment of Debts.

“The son shall not be obliged to pay money due by a surety:” this, which had been previously mentioned, must be understood of money due by his father, who was surety for appearance.

CULLÚCABHATTA.

The word “appearance” must allude to the debtor as a near term. The honest and dishonest proceeding of a debtor had also been propounded: hence the surety for honesty is also comprehended under the text. This YÁJNYAWALCYA makes evident.

CLII.

YÁJNYAWALCYA:—Should a surety for the appearance or the honesty of another die, his sons need not pay the debt; but the sons of a surety for payment or delivery must pay *the sum lent, or deliver the thing undertaken*.

“ Surety for the honesty of another ;” surety for *the good behaviour of the debtor*, giving confidence *to the lender*. “ Die” is illustrative of seclusion from the world, remote absence, and the like. “ The sons of a surety for payment :” the literal interpretation is this ; the sons of those who are bound for payment, that is, who are sureties for the discharge of a debt or the delivery of mortgaged property, must pay the sum lent.

“ Those who are bound for payment ;” the sons of a surety for payment. The *Retnácara*.

A surety for delivery is comprehended under the terms of the text. That in some instances the son of a surety for appearance must also discharge the debt, CÁTYÁYANA declares.

CLIII.

CÁTYÁYANA :—Should a man become surety for the appearance of a debtor from whom he had received a pledge *as his own security*, the creditor, *if that surety die*, may compel his son to pay the debt on proving the whole case.

If he became surety for the appearance of the debtor, after receiving a pledge *for his indemnity*, and the whole case be proved by the claimant or creditor ; then, if that surety be dead, his son may be compelled to pay the debt. “ Any-how ” and “ the person bound ” must be understood, for the purpose of making the agent in the sentence the same, agreeably to rules of grammar ; “ *should a man become surety after receiving a pledge, and be any-how proved to have received that pledge, &c.* ” “ Proved ” is in the regular passive form.

Thus a borrower asks a loan of a money-lender, and he requires a surety ; but the surety, for his own assurance, demands a pledge : in such a case, he became surety for the appearance of a debtor, from whom he had received a pledge. If that surety die, and the debtor also die, or be unable to discharge the debt, the son of the surety may be compelled to pay it. That debt, however, was not secured by a pledge *delivered to the creditor* ; the interest therefore shall be computed at the rate of an eightieth part increased by

by an eighth. "Appearance" is here illustrative of a more general sense. Hence, if a surety for honesty also take a pledge *as his indemnity* and die *unexonerated*, his son may also be compelled to pay the debt; for MENU, using the expression "a surety other than for payment," intends the surety for honesty as well as the surety for appearance, who are both different from the surety for payment. May not the expression used in the text of MENU (CLIV), "a surety other than for payment," be restricted to the surety for appearance, since that coincides with the text of CÁTYÁYANA? If the surety for honesty have likewise received a pledge, why should not his son pay the debt, since the reason of the law applies equally to both? Accordingly this gloss is delivered in the *Mitâcshará* on the text of CÁTYÁYANA (CLIII): "surety for appearance" is illustrative of surety for honesty. However, the text is there read, "even without assets left by his father," instead of "on proving the whole case."

CLIV.

MENU:—On what account then is it that, after the death of a surety other than for payment, the creditor may *in one case* demand the debt *of the heir*, all the affairs of the deceased being known and proved?

This is a question proposed. "Surety other than for payment;" different from the surety for payment, namely a surety for appearance *and so forth*. "All the affairs of the deceased being known and proved;" the circumstances, such as the receipt of a pledge, *being proved*, that having been taken; and the receipt of the pledge by the surety being known and proved, and so forth. "The creditor, literally the giver;" the person who delivered a loan. After the death of that surety, on what account, and from whom, can he demand payment of the debt, since the surety *himself* is dead? This is a question proposed. The answer follows:

CLV.

MENU :—If the surety had received money from the debtor, and had enough to pay the debt, the son of him who so received it shall discharge the debt out of his *inherited* property: this is a sacred ordinance.

If the debtor had given money, if money had been given by the debtor, (to the surety of course, from the purport of the text;) then the surety has enough to pay the debt; he has a lien on money applicable to the payment of the debt (money of course received from the debtor). His son therefore shall discharge the debt “out of his property.” The money so received is referred secondarily to his son. “This is a sacred ordinance;” it is directed in the system of jurisprudence that he shall discharge the debt. Such is the interpretation delivered in the *Ketnācara*. But **CULLÚCABHATTA** explains the term as an epithet of surety; it signifies one to whom property has been given as a pledge: and thereby having in his hands a lien on a sum sufficient to pay the debt, *his son shall discharge it*.

HELÁYUDHA otherwise expounds the phrase, “all the affairs of the deceased being known and proved:” “the circumstance of his not having received any pledge being known and proved.” Thus, if he became surety without having received a pledge, and the whole case be known and proved, on what account could the creditor demand the debt *from his son* after his death? Of course on no account. Hence, after the death of one who became surety for the appearance of another without receiving a pledge, the judge shall not compel his son to discharge the debt. But the subsequent text (CLV) is explained as above. In effect there is no difference. However, the law concerning money due by a surety for appearance, already propounded (CLI), would be vainly repeated in the subsequent text (CLIV).

“If the surety had received money;” if property had been delivered to him not amounting to gift. Consequently, if effects had been delivered to the surety by way of deposit, without declaring a positive gift and so forth; if the surety be such, *we say,*

his son shall discharge the debt out of his property, namely the property which is in his possession held as a deposit. He must discharge it, although he hold no property given *to him*. This takes place when the surety for appearance has not produced the debtor, and that debtor afterwards die, or, though living, is insolvent. This case is intended. Or, with a view to the case of a surety for payment, this text (CLIV) enforces the sense of the preceding text. “All the affairs of the deceased being known and proved;” the whole circumstance of his not having received a pledge being known and proved. On what account then might the creditor demand the debt, after the death of a surety for appearance, who had received no pledge? It follows of course, that on no account can he demand it. By the condition specified, that the receipt of no pledge be proved, it is intimated, that, if he became surety for the appearance of a debtor, from whom he received a pledge, then, should he die, the creditor may recover the debt from his son.

If there be several sureties, by whom must the debt be paid? and what shall be the decision of such a case? For instance; if there be many sureties for payment, or many sureties for appearance, or honesty, who have received a pledge; in such a case may payment be required from any one of them? or must they all pay their proportionate shares of the debt? or each severally pay the whole sum?

CLVI.

YÁJNYAWALCYA:—When there are two or more sureties jointly bound, they shall pay their proportionate shares of the debt; but when they are bound severally, the payment shall be made *by any one of them*, as the creditor pleases.

At the time of contracting the debt, if it were settled by the express declaration of the creditor or of the debtor, or by the engagement of the sureties themselves, that the creditor shall receive the debt from the hands of any one of several sureties bound for the same debt, this text propounds a rule of decision for that case

case. Two or more persons may become sureties in consequence of the creditor's requisition: for instance, he may require several sureties, reflecting, "if a single surety die as well as the debtor, from whom could the debt be recovered?" Or the debtor may ingenuously give several sureties. Other cases may be easily supposed.

The sense of the text is this: when there are many sureties, they must make up the sum according to their proportionate shares, and pay it to the creditor. The whole meaning is, that the general law directs payment of the debt by proportionate shares, in the case of many sureties for the same debt. He propounds a special rule: "but when they are bound severally, &c." If they be bound in the same manner as a single surety; if any man singly become surety for a debt, as that whole debt must be discharged by him, so, if they become severally bound for the payment of the whole debt, *it may be exacted from any one of them*. When these sureties become so bound, the payment shall be made *by any one of them*, as the creditor pleases. Consequently, should the creditor choose to require payment of the whole debt from DÉVADATTA alone, it must be discharged by DÉVADATTA alone; if he choose to require payment of the whole debt from any one of them, it must be paid by any one of them: but if he choose to require it from all proportionally, it must be discharged by all the sureties. In this and other similar modes should be understood the creditor's option.

If the creditor be desirous of exacting payment of the whole debt from each of the sureties, what would be the consequence? Since that is contrary to justice, his wish of exacting an undue sum would be fruitless: for, who can obtain many hundred *suvernas* for a loan of one hundred *suvernas*? To detail the reason of the law would unnecessarily swell the book; it is therefore unnoticed.

Should the creditor choose to exact payment of the whole debt from any one surety, it is settled that he must discharge it. Having paid it, may that surety recover from all the other sureties their proportionate shares of the debt? On this question a certain author has said, he shall not recover *their proportionate shares from the other sureties*, since no law has expressly declared it: for the general rule directs, that "they shall pay their proportionate

portionate shares; and it is intimated by a special rule, that "payment shall be made as the creditor pleases." Consequently, when there are two or more sureties bound like a single surety for the payment of the whole debt without mutual connection *or joint responsibility*, then the payment shall be made as the creditor pleases: he may exact payment of the whole debt from any one of them, or from all the sureties, under the authority of that special rule. In a different case, when two or more sureties are jointly bound, they must pay their proportionate shares of the debt: how could one surety, having discharged the whole debt, recover from the rest their proportionate shares, when all were severally bound like a single surety? The law forbids it.

That is wrong; for the general and particular rules would be irrelevant, since there would be no contradiction of sense, *or exception*. In all cases where two or more persons have become sureties, all the sureties shall pay their proportionate shares of the debt; but if they be severally bound like a single surety, another distinction is stated, namely, that payment shall be made as the creditor pleases: as in the injunction, "give curds to the priests, and diluted curds to the CAUNDINYAS," meaning to those who have officiated at the solemn rites*. In fact, the expression, "as the creditor pleases," should be considered only as a circumstance of the action. That action is suggested by the nearest term, "they shall pay:" and the agents in the sentence are the sureties just mentioned. It appears, therefore, that immediate payment must be made by the exertion of any one of them, or by all the sureties, at the option of the creditor; and that exertion consists in making up the sum by any possible means, and so forth. It follows, that all must *ultimately* pay their proportionate shares of the debt. There is not consequently any difficulty. Again; if any one surety refuse to pay his share *of the debt*, the king shall compel him to pay it. But if any one of many sureties say, "I will alone discharge the debt," no law directs that it shall be solely paid by him; reason alone suggests it.

When the debtor gives a second surety for payment, or for appear-

* I insert the whole example, which is incomplete in the citation. The special injunction is an exception to the general precept. But a rule, unconnected with, and independent of another, is not a particular or exceptive rule.

appearance, to the surety for payment ; in that case also, like a creditor obtaining the sum from the surety who is responsible to him, the original surety should pay the debt to the creditor ; but the subordinate surety cannot be attacked by the original creditor. So, in other cases, a rule of decision may be deduced by *the reader* himself.

If the sureties become severally bound, each for his own undertaking, they may each be severally compelled to pay the whole sum, *for which he became bound*, to the creditor. In this gloss of the *Vivāda Retnācara*, “each severally” signifies one by one ; intending the case of more than one *separate engagement*.

“As the creditor pleases :” for instance, when the engagement is made, the creditor says, “at my option the sum may be exacted from any one surety ; I am not restrained to make a joint demand ; any one surety must pay the whole sum.” Such is the sense. *The Vivāda Chintāmeni.*

This point has been sufficiently explained by the text of VRIHASPATI (CXLII 3). If the surety for payment die, it is established that the debt may be recovered from his son ; shall it be recovered with or without interest ?

CLVII.

VYĀSA :—The son of a son shall *in general* pay the debt of his grandfather, but the son *only* shall pay the debt of his father incurred by his becoming a surety, *and both of them* without interest ; but it is clearly settled, that their sons, *the great grandson and grandson respectively*, are not *morally* bound to pay.

The sense is, the grandson must pay the debt which was contracted by his paternal grandfather without giving a pledge. This must be considered as appertaining to the title of Payment of Debts. “The debt of his father incurred by his becoming a surety ;” if his father became surety for the payment of a debt due from any person ; or, taking a pledge, became surety for his appearance or honesty ; then, should the father die, his son must

must pay that debt without interest; he must only pay the exact sum borrowed; and no interest upon it. Consequently, the entire debt of the grandfather must be paid by the grandson without interest; and the debt of the father, incurred by his becoming a surety, must be paid by the son without interest. The *Retnācara*.

Here the entire debt of the grandfather signifies the debt contracted by the grandfather with a stipulation of interest. "Their sons are not *morally* bound to pay;" a son of the grandson, and a son of the son. The great grandson need not pay any debt of his great grandfather, nor the grandson the debt of his grandfather incurred by becoming a surety.

CLVIII.

CĀTYĀYANA:—Money due by a surety need not on any account be paid by his grandsons, but in every instance such a debt incurred by his father must be made good by a son without interest.

The debt of a grandfather, incurred by his becoming a surety, need not be paid by grandsons: such a debt shall only be paid by a son; still, however, without interest. To denote this, the particle is employed. The connective sense is, that the son is also exempted from the payment of interest. From the expression "in every instance," a certain author has deduced, that the debt of his father, incurred by his becoming a surety, or on his own account, shall be paid by the son without interest, as a debt incurred by his grandfather is paid by a grandson *without interest*. That is wrong; for it is inconsistent with a text which will be cited from *VRĪHASPATI* (CLXVII 2), and with the gloss of *CHANDÉSWARA*, "the debt must be paid by sons with interest, as if it were their own." Hence the expression "in every instance" must be understood to signify "in every instance of a surety for payment and so forth."

CLIX.

Smṛiti, cited in the *Mitācsharā*:—Should the debtor be

be insolvent, and the surety have assets, the principal only must be paid *by his son*; he is not liable for the payment of interest.

This text also ordains the payment of a debt without interest by the son of a surety for payment. What proof is there that the debt shall be discharged without interest by the son of a surety for the appearance or honesty of a debtor, from whom he had received a pledge? It should not be affirmed, that the text of CĀTYĀYANA above cited, expressing "in every instance," is authority for exempting him from the payment of interest; for that may be otherwise expounded. Nor should it be affirmed, that the text of law cited in the *Mitācsharā* may authorise that inference, if "assets" be explained "a pledge." The author of the *Mitācsharā* does not warrant such an interpretation.

On this point it is said, there is no authority for asserting that the debt shall be paid with interest. The text of CĀTYĀYANA directs generally, that a debt incurred by a surety shall be discharged without interest. Consequently that is settled in every instance of a debt incurred by a surety: but in the present instance the consequence might be inconsistent with reason. It cannot be true that the son of him who, having received effects worth ten pieces of money, became surety for a debt of five pieces, shall pay the debt without interest. If a chattel of small value have been received as a pledge, then only shall the debt be discharged without interest; but when valuable effects have been received, why should payment be accepted without interest while the assets are sufficient for the *whole* debt? The debt must therefore be discharged with interest; and the surety must restore the surplus, if there be any, to the debtor or his family.

This decision regards a pledge which may not be used; it is not fit that the surety should use the pledge: but if it be used, payment must be made in proportion to the use and profit of the *pledge*. If it be asked, the pledge received being of very inconsiderable value, might not the whole debt, even without interest, be fully discharged? the answer is, even that is admissible: accordingly it is expressed in the text of MENU, "if the surety had enough to pay the debt;" and in the gloss of the *Mitācsharā*, "if he had received a sufficient pledge." Should the son of the
surety

surety also die, the successor of the debtor, who has received his heritage, should withdraw the pledge from the grandsons of the surety, and himself discharge the debt. Such is the meaning.

If there be two or more sureties for the same debt, and one of them die, leaving a son, should it be the creditor's choice to recover the debt from the son, he must receive it without interest, and not with interest. But, should it be the creditor's choice to recover the debt from another surety, the son of the deceased surety must pay his proportionate share; but he need not pay interest, for he is the son of a surety. The creditor, however, may recover the debt with the whole amount of interest, since the surety *called upon* must immediately pay *the whole sum*. Whence then can the interest be recovered on the share of the debt which is payable by the son of a deceased surety? To this it is answered, if there be many sureties severally bound like a single surety, should any one of them die, leaving no son or other *heir liable for the debt*, from whom could his share of the debt be recovered? Consequently, as in that case the surviving sureties must contribute their proportionate shares *of the deficiency*, and discharge the debt, *although* "payment be made as the creditor pleases;" so in this case also, even though the son be living, he is as it were non-existent in respect of interest: consequently the surviving sureties, together with the son of the deceased surety, must contribute their proportionate shares of the principal sum, but the amount of interest must be made good by them, unaided by that son.

But some lawyers remark, when the creditor makes his election of recovering the *whole* sum from one surety, he shall receive it from one alone; how can the surety, who discharges the debt, recover proportionate shares from the rest? But if the creditor have chosen to receive the sum from all the sureties in due proportion, then the son of a deceased surety must pay his share of the debt without interest. Again; when five persons have become jointly bound as sureties for a debt, then, should one die, his share of the debt must be received from his son without interest: but if he leave no son, or other *amenable heir*, his proportionate share is lost; since it was virtually understood, when the agreement was made, that the five persons were each bound for a fifth part of the debt. Yet, if it were agreed, "should any

one of us die, the debt must be discharged by such of us as survive," then the whole debt must be paid by the surviving sureties contributing their proportionate shares. This is mentioned merely as an example; that in other cases also the adjustment must be made according to the tenor of the agreement, may be easily inferred by the reader himself.

Shall the surety, *thus becoming* a creditor, recover what has been paid by him to the *original* creditor, in consequence of the debt remaining undischarged by the debtor though living, but insolvent, dishonest, or the like?

CLX.

VRĪHASPATI ordains:—Should a surety, being harassed, pay the debt for which he was bound, he shall receive twice the sum from the debtor, after the lapse of a month and a half.

"A surety;" a person who has become bound *for another*. "Being harassed;" being adjudged by the arbitrators to pay the debt *in this form*, "since he became surety for that man, he must pay the debt to the creditor." "After the lapse of three fortnights, *or a month and a half*;" after forty-five days. A debt of one hundred *suvernas* having accumulated with interest to two hundred *suvernas*, is again doubled, and amounts therefore to four hundred *suvernas*; that sum he shall receive from the debtor. The cause of doubling the debt is the offence committed in not immediately paying it.

CLXI.

VIŚHNU and NĀREDA:—If the surety, being harassed by the creditor, discharge the debt, the debtor shall pay twice as much to the surety.

CLXII.

YĀJNYAWALKYA:—When the surety is compelled to

to pay a notorious debt to the creditor, the debtor shall be forced to repay double the sum to the surety.

“Notorious ;” adjudged by arbitrators. “Notorious” should be understood in the text of VISHNU and NÁREDA, for it has the same import with the text of YÁJNYAWALCYA. VRĪHAS-PATI renders the meaning evident.

CLXIII.

VRĪHASPATI :—If dull *sureties* innocently pay the debt, when unbidden, or when required to pay another debt, how and from whom can they recover the sum?

“Dull ;” whose understanding is sluggish ; being slow *even* in their own affairs, *it is perceived that* their minds are heavy. “Innocently ;” without guile. “Unbidden” by the umpire.

The *Retnācara*.

The meaning is, not told by arbitrators, “pay the sum to that man.” Here “unbidden by arbitrators” also implies, that it is not any-how proved by witnesses that the debt should be paid by the surety. Accordingly YÁJNYAWALCYA says “notorious,” that is, not unbidden by arbitrators. So,

CLXIV.

CÁTYÁYANA :—The surety shall *immediately* receive from the debtor, *but without interest*, the sum which he has paid, when legally urged by the creditor, on proving the case by witnesses.

On proof by witnesses that the debt ought to be paid. “Urged by the creditor ;” mentioned as a matter of course, for payment would hardly be made by one who was not urged. From the expression “he shall receive the sum,” it appears that

the surety shall receive so much only as was paid by him to the creditor, and not double that sum. But the double sum has been directed by the text of YÁJNYAWALCYA ; there is consequently an inconsistency. It must therefore be settled, that within a month and a half he can only receive the exact sum paid, but after a month and a half he shall receive twice that sum. In this case, however, there is no reference to the period in which a debt is regularly doubled, such as fifty months and the like, for no such law exists ; the expiration of a month and a half is alone a sufficient term, under the text of VRĪHASPATI (CLX), to double the sum. Such is the best mode of interpretation approved in the *Retnācara*.

GRAHÉSWARA and MISRA explain the text of CÁTYÁYANA as intending only the following case : a considerable space of time having elapsed beyond the stipulated term, if the creditor resolve on recurring to the king, but the surety, apprehending punishment, pacify the creditor at a pecuniary expence, and discharge the debt, the surety shall in that case recover from the debtor the money employed in appeasing the creditor ; but shall only receive back the exact sum, not twice the amount. But the author of the *Mitācsharā* says, twice the sum must be immediately paid. He holds, that the lapse of a month and a half is not required. To reconcile the text of VRĪHASPATI, money expended in appeasing the creditor must be supposed. On this subject YÁJNYAWALCYA propounds a distinction.

CLXV.

YÁJNYAWALCYA :—Female slaves and cattle delivered by a surety must be made good with their offspring ; grain shall only be repaid two-fold ; cloth is declared to be quadrupled ; and liquids octupled.

“ Female slaves and cattle ;” a debt consisting of female slaves or cattle. If a surety be compelled by a creditor to deliver female slaves, goats, and the like, they shall be received back by the surety with their offspring only ; but grain and the rest
with

with the accumulation mentioned. Other things can only be doubled. The *Dīpacalīcā*.

The doubling of every kind of property having been suggested, it is here directed by a special law, that liquids shall be repaid octuple; cloth quadruple; and female slaves or cattle with their offspring, that is, with no other recompense but their offspring. If one female goat, having been lent, be made good by the surety, in consequence of the debtor being unable to discharge the debt, then, after the lapse of considerable time, the debtor being able to discharge the debt, one female goat shall be delivered to the surety, and as many kids as have been produced from that *first* goat. If that female goat die *unproductive*, the debtor must afterwards deliver a single goat, and no kids, for none have been produced. "Grain and the rest;" grain, cloth, and liquids. "Other things;" gold and the like. The gloss of the *Dīpacalīcā* may be taken in a literal sense.

Here an observation should be made. When the surety would have been liable for the payment of the debt, in consequence of the debtor's absence; if the surety be dead, it shall be paid by his son alone, and without interest, as has been mentioned. Afterwards, when the debtor is amenable for the payment of the debt, it is reasonable that he should pay to the son of the surety twice the amount of the original sum paid by him without interest. Must that debtor again pay the *arrear of* interest to the creditor, or not? On this question some remark that the principal sum only, and no interest, has been received from the son of the surety: the interest shall therefore be recovered from the debtor; for it is inconsistent with reason that the creditor should sustain a loss without any fault on his part. But others say, that interest need not in that case be paid by the debtor, since no law directs it. Is not the general law, which ordains interest at the rate of an eightieth part, applicable to this case? No; for that is precluded by the text of CĀTYĀYANA (CLVIII), the terms of which are expounded "void of interest;" since, if interest were payable by any person whomsoever, it could not be void of interest. Of these two opinions, preferring that which is best and most firmly established, a single rule of decision should be adopted.

On this *text* (CLXV) the *Mitācsharā* has this comment: that kind of property, for which a special *recompense* or rate of interest

has been propounded, being paid by a surety, the debtor must immediately make it good, without any reference to particular periods, but with the interest propounded: such is the implied sense. The author conceived, that interest is propounded by the text on female slaves, cattle, and the like: now there can be no interest without a loan, as has been already stated; but female slaves and cattle may be lent by one who is unable to maintain them himself, and wishes they should be supported: this text intends only such a loan.

CHAP. V.

ON THE

PAYMENT OF DEBTS.

A DEBT of such a kind should be paid ; a debt of such a kind should not be paid ; it should be paid by this heir ; it should be paid at this time ; it should be paid in this mode : thus the subject is five-fold in respect of the debtor. It is two-fold in respect of the creditor, namely, the rule for delivery, and the rule for receipt. Of these seven topicks of loans and payment, one topick, the rule for delivery by the creditor, has been expounded. Explaining the verb “ give ” or deliver in the sense of payment, the other six topicks are expounded in *the two following* chapters. Such is the method authorized by the *Mitâcsharâ*.

CLXVI.

VRĪHASPATI :—By whom, to whom, and in what mode, should, or should not, be paid a loan which has been received from the hands of another in the form of a loan on interest, shall be now declared :

2. If the time of payment be not expressed, the debt shall be paid on demand, *with the interest then due ; if expressed, at the full time limited ; and if not previously demanded, when interest ceases on becoming equal to the principal* : if the father

should die *in debt*, it shall be paid by his sons, *with interest as far as the law allows*.

By the text of NÁREDA (I) the forensick term of “loans and payment” is stated as comprehending twenty topicks in respect of the creditor and debtor*. The verb “give” or deliver, has consequently the double sense of lend and pay. The topicks suggested by the verb taken in its sense of “lend,” namely, the eight-fold rule for delivery by the creditor (interest and the rest), and the rule for receipt by the debtor (stipulated interest, and the delivery of the interest promised, and so forth), which constitute ten topicks of loan and payment, have been directly or virtually expounded. The topicks suggested by the verb taken in its sense of “pay,” are now propounded, namely, the eight-fold rule for payment by the debtor, and the rule for receipt by the creditor, which also constitute ten topicks of loan and payment.

“From the hands of another;” from the hands of the lender. “In the form of a loan on interest;” with a declaration, “that shall be repaid with interest by me to him:” the construction is, ‘the debt which had been received *in this manner*.’ By what debtor that should, or should not, be repaid; to what creditor it should, or should not, be paid; and how, or in what form it should, or should not, be paid. Again; imagining the word “what,” the topicks of what should, or should not, be paid, may be understood, as in one reading of the text of NÁREDA (I).

“It shall be now declared;” this, signifying ‘almost at the present time,’ expresses, that it shall be forthwith declared. The Sage proceeds to the rule for payment (CLXVI 2); that debt, which has been received for no stipulated term, must be repaid on demand; that is, on a simple demand. Consequently, for that loan, which has been received on requesting it in this simple form, “lend me the sum,” the rule of payment is such that no delay must be made when the debtor is told, “pay the debt.”

When it is settled by both parties, that the will of the creditor shall

* By whom	{ what may be lent what may not be lent what must be paid what need not be paid }	to whom	{ }	in what form
Rules for delivery	{ by the creditor }	{ }	{ }	by the debtor.
Rules for receipt				

shall regulate the time of payment, the debt must be paid on a simple demand; but when another term has been fixed, it must be paid at the full time limited. MISRA.

And BHAVADÉVA says, when *a time* has been settled by both parties as the period of payment, *or when the debt has been made payable* at the option of the creditor, &c. In this gloss the words “specifick time” must be supplied. To both these opinions it may be objected, that the subsequent phrase “at the full time limited” would be a needless repetition. But that phrase concerns a debt for which a time of payment has been fixed. Consequently, for that loan which has been received on application made in this form, “I will pay the debt within two years, lend me the sum *required*,” the rule of payment is such that no delay must be made when that period is complete. But when a loan has been received on a simple request in this form, “lend me the sum *required*,” and the creditor meanwhile has not demanded it, what should be done? The Sage adds, “when the interest ceases;” now interest ceases on the debt after the lapse of time sufficient to double it, as has been already mentioned: that it must be then paid, is the rule of payment for such debts. This and other points may be argued.

It has been thus explained, that the very person who contracted the debt must discharge it. But in the case of his death, the Sage adds, “if the father should die *in debt*, it must be paid by his sons.” On failure of the father, who contracted the debt; that is, if he die, or be secluded from the world, or go to a foreign country, the debt must be paid by his sons, with interest. It must be paid even by his son’s son, *but without interest*.

CLXVII.

VRĪHASPATI:—The father’s debt must be first paid, and next a debt contracted by the man himself; *but* the debt of the paternal grandfather must even be paid before either of those.

2. The sons must pay the debt of their father, when proved, as if it were their own, *or with interest*; the

the son's son must pay the debt of his grandfather, *but* without interest; and his son, *or the great grandson*, shall not be compelled to discharge it, *unless he be heir, and have assets**.

First the debt of the grandfather *should be discharged*, next the debt of the father, and lastly the debt contracted by the man himself: such is the legal order of payment. "As if it were their own;" as their own debts are paid with interest, so must this be paid with interest. "When proved;" when established by the testimony of witnesses. But the debt of a grandfather may be discharged without interest. "His son;" the grandson's son, readily suggested by the preceding term, is thence understood. Consequently the great grandson shall not be compelled against his will to discharge the debt of his great grandfather; but, if the great grandson be willing, it may be discharged by him.

CLXVIII.

VISHNU:—If he who contracted the debt should die, or become a religious anchoret, or remain abroad for twenty years, that debt shall be discharged by his sons or grandsons, but not by remoter descendants against their will.

"Twenty years" are connected *in the sentence* with absence in a foreign country. "Not by remoter descendants;" not beyond the third generation *inclusively*: it need not be paid by the fourth in descent, and so forth. "Against their will;" but if they wish well to a great grandfather or other remoter ancestor, the debts even of such ancestors should be paid by the fourth in descent, and so forth.

The *Retnâcara*,

Civil and natural death being in effect equal, a lapse of time cannot properly be required; therefore the commentator says, the construction refers twenty years to the case of absence in a foreign

* Without which, the son and grandson are under a moral and religious, not a civil, obligation to pay the debt, if they can; but assets may be followed in the hands of any representative. Note by Sir WILLIAM JONES.

foreign country. "If they wish well to an ancestor;" since the non-payment of a debt is declared a crime in the third degree, by the text of MENU*, the great grandfather suffers torment in a region of horror if his debt remain undischarged; to prevent that, is a benefit to the great grandfather; when they wish this benefit to him, they must pay the debt. In like manner, the debt contracted even by a son or other descendant may be discharged by the parent if he be willing.

That which affords no gain or permanence of capital, is not a debt†; and if this be not repaid by any person, it is *consequently* no debt: how then can torment in a region of horror be the consequence of its remaining undischarged? It should not be objected, that the text must therefore be unmeaning, since the law only suggests torment in a region of horror, should the debt be not discharged by those whom the law declares indispensably bound to pay the debt. This argument is ill founded, since the great grandfather was himself bound for the indispensable payment of the debt, and the word expressive of cause, in the definition of debt (II), there signifies a circumstance only, *not an efficient cause*.

If the father die, his debts must be paid by his sons, as above-mentioned: this NÁREDA declares with special distinctions.

CLXIX.

NÁREDA:—A father being dead, his sons, whether after partition or before it, shall discharge his debt in proportion to their shares; or that son alone who has taken the burden upon himself.

"Being dead;" having deceased, or having retired from worldly affairs: this also suggests long absence, as expressly stated in the rule of VISHNU (CLXVIII). "In proportion to their shares;" whether after partition or before it: such is the meaning.

Consequently, after partition, sons must discharge the debt at its full term, whether known or unknown when partition was made,

* See MENU, Chapter xi, V. 66.

† See the definition of Loan or Debt at V. 2.

made, in proportion to their shares. But if they be undivided, they shall pay it out of the common property. However, if the eldest brother, or any other brother skilful in business, superintend the affairs of the family like a father, he must discharge the paternal debt out of the common stock. In effect, there is no difference in the two cases. This distinction may nevertheless be understood; by the first part of *the text* it is suggested, that if all the brothers be similarly circumstanced, all, or any one of them as substitute for the rest, may be impleaded; but if any one brother have taken the burden upon himself, he alone is impleadable.

Or the phrase, “that son alone who has taken the burden upon himself,” may be thus expounded; when the other sons reside at various places, and one son occupies his father’s abode, and enjoys his father’s property, he alone bears the burden, namely the load *formerly* borne by his father, and therefore he must also pay his father’s debts: for MISRA says, ‘when any one of the sons is installed in the place of his father, he alone *must pay the debt* ;’ and *he must pay it*, because he has taken the heritage. So must two or more *brothers*, who have taken the burden upon themselves; for the term “that son,” *though* expressed in the singular number, must be taken indefinitely.

Again; if any one of the sons declare, “I will neither receive *my share* of my father’s property, nor pay his debts,” and the others assent to that *arrangement*; in that case, those only who have accepted the father’s estate, with his debts, shall discharge the debts of their father. This also is intended by the expression, “that son alone who has taken the burden upon himself.” Or the expression, “whether after partition or before it,” may be explained, ‘whether separated from their father or not separated;’ and the particle may be taken in a determinate sense. If there be undivided sons, they alone must discharge the debt; or, on failure of them, the divided sons. This interpretation should be admitted.

CLXX.

YÁJNYAWALCYA:—The father being gone to a foreign country, or deceased *naturally or civilly*, or wholly immerfed in vices, the sons, or their
sons,

sons, must pay the debt ; but, if disputed, it must be proved by witnesses.

“ Being gone to a foreign country ;” having gone to a distant abode in a foreign country, and not returning within twenty years : for it coincides with the rule of VISHNU (CLXVIII), and the text which will be cited from NÁREDA (CLXXV). Seclusion from the world, or *civil death*, must also be understood. “ Deceased ;” meaning natural demise.

“ Wholly immersed in vices ;” the term (*vyasana*) is explained by lexicographers, ‘ danger, disease, or calamity ; falling low, vice originating in lust or wrath *.’ Consequently, the father being involved in distress, that is, being afflicted with a hopeless distemper, or long confined in fetters by the king in consequence of the offence of another ; or fallen from his class, as a degraded person or the like, and excluded from the patrimony ; or immersed in vices originating from *irregular* desires, (whether avarice, lust, or any impulse of the mind,) such as gaming or the like, and love of harlots ; or immersed in vices originating from a wrathful temper, or governed by pride ; *in all these cases the son must pay the debt.* For instance ; the father, behaving with insolent pride, says, “ I will not pay the debt, the creditor may take what measures he pleases ; in such a case, the son should pay the debt, lest he fail in duty to his father, out of any possible funds, either the paternal wealth or other property : but on failure of sons, the debt should be discharged by the son’s son. However, the debt may be paid by the son’s son without interest, as above mentioned : the case is the same. CHANDESWARA has briefly said, should the father be unable to pay the debt, it must be discharged by his son, or, on failure of sons, by his grandson.

The son does not know that his father had contracted a debt from that man ; or he knows it, but conceals his knowledge ; in these cases “ it must be declared by witnesses :” it must be established by the evidence of witnesses. But on the reading approved by MISRA, (*śácshi bhávitam* instead of *śácshi bháshitam*,) the *literal* sense is, “ proved by witnesses.”

The father, who contracted the debt, being absent, or dead, or addicted to gaming, to *frequentation of harlots and the like*, or
(under

* AMERA SINHA, on words with many senses.

(under the suggestion of the particle “ or ” taken in a large sense) afflicted with an incurable distemper or the like, or degraded, his debts must be paid by his son, or, on failure of him, by his son’s son ; but, if disputed, the debt must be proved by oral or other sufficient testimony. *The Dīpacalīcā.*

The word “ witnesses,” standing in the text, is supposed in the *Dīpacalīcā* to intend also written evidence and the like. Here the debt has remained undischarged in consequence of degradation, because the degraded person held not the patrimony ; not because he is *equally* incapable of paying debts as of performing religious rites. It must be paid by his son, to rescue him from a region of torment. But, according to RAGHUNANDANA and others, an outcast is only incapable of property so long as he be averse from the *necessary* penance.

Must a debt, contracted by a man who has no assets, be paid after his death by his son or grandson ? On this question it is said, even in such a case the debt contracted by him ought to be paid by his son, or, on failure of sons, by the grandson ; for, commenting on the following text, it is said in the *Dīpacalīcā*, the son, who is capable of inheriting the estate, not being blind nor otherwise disqualified, but who has not received assets left by the father, *is meant* ; not one who has taken the father’s estate, for he is suggested by the expression “ who has received the estate : ” and it is mentioned in the *Mitācsharā*, that the son or grandson may be compelled to pay the debt, even if no assets have been received : and it is stated in the *Retnācara*, that a son capable of inheriting the paternal estate, not being blind or otherwise disqualified, is here designed ; not one who has received assets left by the father, for he is suggested by the expression “ who has received the estate.”

CLXXI.

YĀJNYAWALKYA:—He who has received the estate of a proprietor leaving no son *capable of business*, must pay the debts *of the estate*, or, on failure of him, the person who takes the wife *of the deceased* ; but not the son whose *father’s* assets are held by another.

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The order in which persons are liable for debts, is therefore as follows: in the first place the debtor himself; on failure of him, his son competent *to inherit and manage the estate*; on failure of such, the son's son; if there be no *such grandson*, the great grandson, wife, uncle, or other heir, who has succeeded to the estate, or the brother or other guardian of it: should there be no such person, he who has taken the widow; if there be none such, a son incompetent *to inherit or to manage the estate*. So the *Chintāmeni*, *Retnācara*, *Dīpacalicā*, and the rest. However, the obligation on an *incompetent* grandson to pay the debt is not noticed in those works under this head. This point shall be discussed. On failure of him, the great grandson, or remoter descendant, who has not received property left by his ancestor, may pay the debt if he be willing, but not otherwise. Such is our opinion. It should be affirmed, since it is positively said in the *Dīpacalicā*, 'uncles and other kinsmen, capable of taking the heritage of one who leaves no issue, *must pay the debt*.'

That the debtor is bound to pay the debt, appears from many texts (CLXVI 2, &c.); that on failure of him, his son, if competent, *must pay the debt*, appears from the latter part of the text quoted (CLXVI 2), and from other texts; on failure of him, the son's son if competent (CLXX); on failure of him, the great grandson or other representative who has received assets (CLXXI). And the text of YĀJNYAWALCYA just cited is thus explained: of a debtor who leaves no competent son, but had assets for the payment of his debts, he who succeeds to the estate must pay the debts: on failure of him, the person who has taken the widow; and not, if either of those be *amenable*, a son, while the assets are held by another, or when the assets left by his father have been transferred from him to another. How can the assets be held by another, notwithstanding the existence of a son? The son may be disqualified, having been born blind, deaf, or the like; or he may be incompetent by reason of disease, minority, or the like: and the author of the *Mitācsharā* remarks, that the assets may be held by another notwithstanding the existence of a vicious son (Book V, v. 316).

The text is read, *putrō nānyāśritadravyah*, not the son whose father's assets are held by another, instead of *putrō' nanyāśritadravyah*, the son whose father's assets are not held by any other; if
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the assets be held by another, although the son be living, that son is not liable for the payment of his father's debts. It is stated in the *Retnâcara*, that this *part of the sentence* is connected with the phrase "must pay the debt;" the construction therefore is, the son shall not be compelled to pay the debt while the assets are held by another. Such is the intention of that gloss.

If no person have taken the widow, the incompetent son must pay the debt.

CLXXII.

NÂREDA:—Of the successor to the estate, the guardian of the widow, and the son *not competent to the management of affairs*, he who takes the assets becomes liable for the debts; the son, *though incompetent, must pay the debt*, if there be no guardian of the widow, nor a successor to the estate; and the person who took the widow, if there be no successor to the estate, nor *competent son*.

This text may be thus interpreted: whoever takes the assets, whether he be *the regular* successor to the estate, guardian of the wife, or son *of the deceased*, but *incompetent to the management of affairs*, is successor to the estate, and must pay the debts. It is so expounded in the *Retnâcara* and other works. Its object has been already stated: "If there be no guardian of the widow, &c.;" if no person have the care of the widow or of the estate; if none take the widow or the estate; the son, that is, the incompetent son, must pay the debt. This, however, intends only a case where he may be justly liable, namely a case of incompetency arising from minority or the like; for no one has said, that a son *born blind*, or otherwise *excluded from inheritance*, shall pay the debts. "And the guardian of the widow;" should there be no successor to the estate, nor competent son, the guardian of the widow is liable for the debts. The object of this has also been already explained.

We hold that great grandsons are *only* liable for the payment of debts, *if willing to pay them*; under the rule of VISHNU (CLXVIII).

(CLXVIII). According to the *Dīpacalīcā*, they may be liable for the debts, under the text of YÁJNYAWALCYA (CLXXI). Still, however, that portion of the text of YÁJNYAWALCYA, which is there adduced, must be restricted to the case of a consenting *descendant*; for it has the same import with the rule of VISHNU (CLXVIII).

Should a man leave both a competent son and a successor to his estate, by whom shall his debt be paid? Let it not be answered, if a competent son be living, there can be no other successor to the estate. If that son live in the house of his maternal grandfather, in consequence of the partiality of that grandfire, or in consequence of the grandfire's being childless; and the father live as a coparcener with his *own* brothers and the rest; when the father dies, that son may possibly not take the trouble of obtaining his heritage. Or, a sister lives in his father's house; and the son, through natural affection, has not taken the estate. In such cases there may be another successor to the estate, although a son be *left*. Nor should it be objected that in such a case the competent son is first liable for the debts, as already propounded. It would be unreasonable that the successor to the estate should not be first liable for the debts. That whole argument is wrong; for CÁTYÁYANA declares the successor to the estate liable for the debts, only in the case where the son is incompetent.

CLXXIII.

CÁTYÁYANA:—The judge shall compel a son to pay the debt of his father, provided he be involved in no distress, be capable of property, and liable to bear the burden; but in no other case shall he compel the son to pay his father's debt:

2. If the son be afflicted with disease, or under *the age fit for business*, and *another* person be found to have taken the assets, the judge must enforce payment from him; or, on failure of such persons, from one who has taken the widow.

Not driven to a foreign country by the oppression of the king or the like, is implied in the phrase "involved in no distress." "Capable of property;" not born blind, deaf, or the like. "Liable to bear the burden;" not a minor or the like. If there be such a son, him the judge shall compel to pay the debt. But if the son be afflicted with disease, or be an infant; or if he be involved in distress, or blind from his birth, and so forth; and if another person be found to have received the assets, from that person alone shall the judge enforce payment; if there be none such, from the person who has taken the widow. Such is the sense of the text. Here "afflicted with disease" is merely an instance. Therefore, should a man die childless, the same rule should be adduced.

CLXXIV.

VRĪHASPATI:—The successor to the estate is liable for the debt, if the son be involved in distress; but the person who takes the widow shall be liable for the debt, on failure of successors to the estate.

The sense of the text is obvious. Let it not be objected*, as inconsistent with reason, that on this construction one would take the assets of the deceased, and another pay his debts. Inconsistency with reason may not be objected to that in which Sages and Authors concur. In fact, when there is a competent son, no other can be *the legal* successor to the estate. In the case stated, why does he not obtain his own father's estate from his uncle and coparcener? If he voluntarily yield it to his uncle, that uncle is not the successor to the estate *of the deceased*, but the occupant of property given by the son. It is the same in the supposed case of a sister. Consequently there is no occasion for a special text on this point; the son must pay the debts, in consequence of his own voluntary act. But if the uncles or the rest forcibly withhold the assets, the king shall compel the delivery. If, through any accident, that cannot be done, he must enforce payment from the

* The author resumes the argument interrupted by the quotation of the texts clxxiii and clxxiv.

the uncle and the rest; for the assets of the father make *the holder of them* liable for the payment of his debts.

Consequently the intention of the texts of YÁJNYAWALCYA and the rest is this: after the decease of the debtor, if he left no assets, or if there be assets which have devolved on the son, the debt must in either case be paid by the son, agreeably to the order of payment propounded by NÁREDA (CLXIX). If there be no son, it must be paid by the son's son: and here also the order of payment propounded by NÁREDA must be assumed from parity of reasoning. If there be neither a son nor a son's son, or if there be a son or grandson, to whom the assets have not descended, but are held by some other person, the debt must be paid by him who has received the assets; on failure of such, by him who has taken the widow; or, on failure of him, by the son or grandson, who was competent to take the heritage. But an incompetent grandson is not liable for the payment of debts, any more than an incompetent son.

The text of YÁJNYAWALCYA is read *putrō'nanyāśritadravyah*, the son whose *father's* assets are not held by another: and that reading is approved by MISRA and VIJNYÁNÉSWARA. Under the expression, "whose *father's* assets are not held by another," may be understood one who has taken his father's assets, as well as one whose father had no assets. The difference between the two interpretations consists in this: if a son, through generosity or the like, do not exact his father's property from his uncles and the rest, he must pay the debt *according to one opinion*, and need not pay *it according to the other*, as is evident. The preferable interpretation may be determined by the wise; but ultimately one only can be admitted.

Or, if a solvent person contract a debt and die, and his son be a minor, or be gone to a foreign country, and his uncle or other *kinsman*, or some stranger, through tenderness for that son, take care of the estate, such person alone may be understood from the expressions, "he who has received the estate of a proprietor," "the successor to the estate," and "a person who has taken the assets." As the guardian recovers money due from others to the estate, so must he pay the debts out of the estate. But if there be no assets, or if no such person take care of the estate, the person who has taken the widow must discharge the debt. If no

widow be left, or if a widow survive but no person take *the guardianship* of her, the son, or the son's son in order, should pay the debt, acquiring funds by any practicable means. If there be neither son nor grandson, and if no person take the widow, or if no widow survive, and if the great grandson or remoter descendant, or the brother or other *collateral relation*, take the property left by the deceased, he should discharge the debt. Such is the sense of the text of YÁJNYAWALCYA. Accordingly it is said in the *Dípacalicá*, the uncles or other *collateral heirs* of the deceased who leaves property. This should be admitted as *an accurate interpretation*. Both are suggested by the ambiguous terms of the texts.

All authors concur in opinion, that a son, being blind or deaf from his birth or the like, shall on no account be liable for the payment of debts. But, according to the *Dípacalicá*, the debt should be paid by an incompetent son, if no person have taken the widow. The word "incompetent" intends such disqualification, as is stated by CÁTYÁYANA, disease and the like (CLXXIII). But the author of the *Mitácshará* states two cases: a son, grandson, or any other person, who has taken the assets, must discharge the debt; on failure of such, he who has taken the widow; on failure of him, any son not *born* blind or the like; and on failure of him, the great grandson or other representative who takes the heritage: they are again mentioned to show the positive obligation of paying debts then only when they have received assets. Or the person who takes the widow, that is, who takes a widow falling under the fourth description of women wilfully libidinous, or the first of twice married women*, becomes liable to the payment of debts on failure of successors to the estate; if there be no such person, the son who would have been competent to receive the heritage, not being blind *from his birth* or the like; on failure of him, any person who has taken the widow *must pay the debt*, under the text of NÁREDA (CCXXII.)

These rules of decision shall be successively discussed. In the first place, if the father die, or reside abroad or the like, the competent son is liable for the payment of his debts. Natural decease, and *civil demise* or retirement in the order of devotion, are

* V. ccxx. and Book IV, V. clviii 2 & 8.

are similar. Concerning absence in a foreign country, the rule of VISHNU above cited (CLXVIII) propounds a distinction.

CLXXV.

NÁREDA:—The father, or, *if the family be undivided*, the uncle, or the elder brother, having travelled to a foreign country, the son shall not be forced to discharge the debt until twenty years have elapsed.

Here *the mention of* “uncle or elder brother” intends the payment of debts contracted by them; and that must be understood in the order above-mentioned, when there is any sufficient cause, such as the uncle or brother leaving no son. Its further application will be mentioned. The particle “or,” repeated in the text, is indefinite, comprehending all persons holding assets of the debtor.

CLXXVI.

CÁTYÁYANA:—If the father be at home, but afflicted with a chronick disorder, *though not without hope of recovery*, or live in a foreign land, *but expected in time to return*, his debt shall be paid by his sons after a lapse of twenty years.

“Twenty years;” after a lapse of twenty years, for the text coincides with that of NÁREDA (CLXXV). And this must be understood when the cure of the disease is possible, or when the return of the absent *parent* may be expected. But, when the distemper is deemed incurable, or the return of the absent parent is impracticable, the son shall pay the debt of his father, though living, as if he were dead. The creditor need not wait twenty years.

The *Retnácara*.

Or *the expression used* in the text, “if the father be at home,” may signify, if he be living; that is, if it be ascertained that he

is alive. Hence, if no intelligence be received, during twelve years, concerning any man who has travelled to a foreign country, the law requires his son to perform obsequies and the like, presuming his death; if the son did not then pay the debt until twenty years had elapsed, that would be inconsistent with common sense, and with the reason of the law. The *following* text of CĀTYĀYANA is authority for this position.

CLXXVII.

CĀTYĀYANA:—A creditor may enforce payment of such debts from the sons of his debtors, who, though alive, are incurably diseased, mad, or extremely aged, or have been very long in a foreign country, *provided their sons have assets of the debtor.*

Both “diseased” and “mad” are here mentioned by the same rule by which two names for kine are used, the one in a generick sense, the other in a particular sense; or to include insanity or intoxication arising from the use of drugs or the like. “Extremely aged;” incapacitated by old age for *the management of affairs.* “Very long in a foreign country,” and not expected to return. “Such,” or of this kind; an epithet of debt intended to exclude debts contracted for spirituous liquors and the like. This will be subsequently explained. Here, from the concurrence of the preceding text (CLXXVI) it appears, that the creditor need not wait twenty years; for the expression “very long in a foreign country” would be superfluous, the sense would be the same with the preceding text, and there would be a needless repetition.

CLXXVIII.

VRĪHASPATI:—A debt of the father being proved, it must be discharged by his sons, even in his lifetime, if he were blind *or deaf* from his birth, or
be

be degraded, insane, or afflicted with a phthisis or leprosy, or other hopeless disorder.

“Blind from his birth;” born blind: for the word *jāti* signifies both class and birth. “Degraded” must be understood of one who is averse from *the necessary* penance. “Phthisis, or leprosy, or other disorder;” this is illustrative of any incurable disease. The *Retnācara*.

“Phthisis,” or marasmus: when a father has been twenty years afflicted with any disease whatsoever, his debt must be discharged by his son; the amplified gloss “phthisis, leprosy, or other incurable or hopeless disorder,” would therefore be unmeaning; hence the interpretation suggested in the *Retnācara*, that, in the case of phthisis or the like, the creditor need not wait twenty years, should be admitted. VACHESPATI MISRA and others concur in this exposition. But the *Pārijāta* and MISRA add, if the father, through indigence, be *wholly* unable to discharge the debt, it must be paid, even though the family be divided, by his son who is able to discharge it, or, on failure of him, it is reasonable *that it should be paid* by his grandson so circumstanced. Since the father, being born blind, was incapable of inheriting his own father’s estate, and is unable to acquire property himself, he may be considered almost *literally* as moneyless.

“Even though the family be divided;” even though his father be separated: *the debt must be paid* by a son whose father is separated from his own brothers and the rest. Or it may be explained, ‘by a son who is separated from his uncles and the rest;’ for no distinction is expressed.

The first case shall be now considered.

CLXXIX.

VRIHASPATI:—A son born before partition has no claim on the paternal estate, nor a son born after it on the portion of his brother, whether in respect of property or debts; nor have they

any claims on each other, except to purification and an oblation of water, *if either of them die* *.

A son born before partition has no concern with the debts contracted, or property acquired, by his father after partition; he is incapable of taking the estate and paying the debts: and the son born after partition has no concern with the portion of his brothers; *that is*, with the debts undertaken by his brothers, and the property received by them on partition. But all are qualified for purification and oblations of water. By this text, so explained, it is cursorily intimated that a son need not pay a debt contracted after partition. Still, however, if the father be unable to discharge the debt, and there be no son in coparcenary *with him* able to discharge it, that debt must be paid by *another* son who is able to discharge it, even though he be separated from the family (CLXIX). But if there be no son amenable *for the debt*, it must be paid, even though the family be divided, by a grandson who is competent *to the inheritance and management of the estate*. Although the text of YÁJNYAWALCYA, which directs generally that the debt should be discharged by the son or by the son's son (CLXX), may be expounded as relating to a grandson not separated from his coheirs, still, if either the son or grandson, who are thus placed on a similar footing, may be liable for the debts even after partition, is it not reasonable to affirm the same in respect of the other? That is actually expressed in the *Pârijâta*; "it is reasonable," &c. and that part of the sentence relates to the grandson. Thus may the law be concisely expounded.

Should the father die, or enter into an order of devotion, or be long absent in a foreign country whence his return cannot be expected, or be afflicted with a hopeless disorder, or be blind from his birth, the debt must be immediately discharged by his son competent *to inherit and manage the estate*; but if he be long absent in a foreign land, whence his return may be expected and so forth, it must be paid after the lapse of twenty years. If the father, having been born blind, was excluded from the patrimony, and the son be capable of inheritance and be not separated from his father, it must be paid by that son out of his own property.

perty. But if such a father were nevertheless able to acquire property, it must be then paid out of the property acquired by him: this is demonstrably true. If there be two sons both able to discharge the debts, and one be not separated, and the other be separated, it must be paid by that son only who is able to discharge the debts and lives in coparcenary (CLXXIX). It is the same in the case of re-union *after separation*, by parity of reasoning. But if the son, who lives in coparcenary, be unable to pay the debt, or if there be none such, the debt must be paid by the son able to discharge it, even though he be separated from the family; on failure of him, by all the grandsons in the male line, who are able to discharge it, not singly by the son of him who was born after partition. But, should the debtor have assets, then, while he lives, it must be paid by his son or grandson out of his property only; after his death, his effects descend, on failure of sons born after partition, to the other sons, or to all the grandsons of the male line whose fathers are deceased; his debt must therefore be paid by them out of his assets. In that case, since they have received assets, there is no difference between a son and a grandson. It is the same also in respect of the great grandson. On failure of *lineal male descendants* within the degree of great grandson, the heritage devolves on the widow and so forth; and the debts must also be paid by the widow or other heir in *the order of succession*. But if there be no assets, the debt should in the first place be discharged by the son out of his own property, or, on failure of him, by all the grandsons of the male line; the great grandsons are under no necessity of paying the debt, as has been already noticed.

But, if there be a son born after partition, and the father die, and the sons with whom partition was made survive, but the son born after partition die leaving male issue; since he who was born after partition was alone entitled to the heritage of his parent, his son can alone claim the assets; not the sons born before partition, nor their offspring: hence the debt shall not be discharged by them, but shall be paid in succession, or jointly, by the son born after partition and by his son, whether they have or have not assets of the debtor. Yet, should they be unable to discharge the debt, *the rule of payment* must be understood as before.

But,

But, should a son separated from his father make a partition with his own sons of the property acquired by himself, and, bringing the remainder of his estate, live re-united with his father, and other sons be born to him; should his father die, and afterwards he also de cease, his sons, as well those born before as those born after partition, shall equally share the property, and pay the debts of their grandfather; but the sons born after partition shall alone take the property, and pay the debts of their father. Thus may the law be concisely stated. This method should be followed in all cases; the subject will be fully considered under the title of Inheritance.

Since the text of YÁJNYAWALCYA (CLXX) does not express *that the debt shall be paid in succession by the sons or by their sons*, may it not be well asserted that the debt must be discharged jointly by sons and grandsons? No; for VRĪHASPATI, ordaining that the debt shall be paid without interest by a grandson, shows a less obligation on the grandson than on the son; it is therefore incongruous to affirm, *that debts should be paid jointly with the grandsons*. Accordingly the *Mitácshará* expresses, on failure of the father, the son *shall pay his debt*; on failure of sons, the grandson.

But the author of the *Smṛtisāra* adds, a debt contracted after partition by the father or kinsman on his own sole account, must be paid by his son and the rest, if he be *long* absent in a foreign land: in this case only is the period of *twenty years* prescribed; not in the case of a debt contracted for the support of an undivided family or the like, for the parceners are also concerned in such a debt. They are equally bound *with* the single parcener, by whom they are sheltered. The precept is not grounded on a latent motive: hence, when payment *is demanded*, in consequence only of the declaration or engagement of a single parcener, without any *ostensible* cause for contracting the debt, then only is a lapse of time required by that precept; but a debt contracted for the support of the family must be paid before *that time elapse*, as ordained by another text of YÁJNYAWALCYA.

CLXXX.

YÁJNYAWALCYA:—If one of *two or more parceners*
or

or undivided kinsmen contract a debt for the support of his family, and either die or be very long absent abroad, the other parceners or joint-tenants shall pay it.

The creditor need not wait a specifick time ; for there is no authority *for such a supposition* : the time allowed solely concerns divided kinsmen. MISRA.

“ Family ” signifies all the persons entitled to maintenance. Since all *the parceners* are concerned in the debt, a lapse of time is not required : the gloss should be so interpreted from the preceding sentence. The meaning is, since all partake of the benefit arising from money borrowed by a single parcener, all are bound for the debt. “ They are equally bound with the single parcener, by whom they are sheltered ; ” a single parcener, contracting debts and so forth, supports all the persons entitled to maintenance : he is as it were their screen or umbrage, sheltering them from ardent distress. Consequently, whatever is done by him may be justly considered as the act of all ; and all being legally bound for the debt, it is deemed a debt actually contracted by those among them who are forthcoming : it is therefore improper to require a lapse of time.

Must not the *literal* sense of the text be preserved, even though it be inconsistent with the reason of the law ; else a sin would be committed by deviating from the precepts of Sages ? This position may therefore be thus reconciled : when a sin is stated in deviating from the precepts of Sages, that intends a precept, the grounds of which are not apparent ; but this is a precept of demonstrable law, founded on reasoning : such is the notion adopted in the *Smṛitifāra*.

“ Hence, when payment *is demanded, &c.* ; ” payment must be made in consequence of an engagement common to all the parceners ; the creditors may have lent the money to any one of them ; it was not necessary that such an engagement should be expressly declared when the debt was contracted : such is the sense of the gloss. Or that gloss may be thus interpreted : payment must be made in consequence of one, that is a single, declaration or text of Sages, or in other words, a text independent of reasoning,

ing, such as the following text: even without a cause of *payment arising* from the *joint* receipt of the loan, that is, without the payer's having been concerned in the receipt of the loan, or having enjoyed *the benefit of* it, or the like, payment must be made; so interpreted by reference to the preceding phrase. In the last case only is a lapse of time required by the texts of Sages. But a debt contracted for the support of the family, excluded from the purport of the preceding text, must be paid before the lapse of twenty years. This the commentator also notices.

“Parceners or joint tenants” (CLXXX); heirs, such as brothers and the rest. “For there is no authority, &c. ;” for there is no expression in this text denoting that the creditor should wait the lapse of time, nor does the reason of the law suggest it. It should not be objected, that a period of *suspension* may be deduced from the concurrence of the text above cited (CLXXV). Since it is proved from the reason of the law that no delay should be allowed to sons and the rest living in coparcenary, there is no difficulty in restricting the text of NÁREDA to sons and others with whom partition has been made. Such is the notion adopted in the *Smṛitifāra*: and that is proper; for, immediately after the text cited, NÁREDA thus proceeds,

CLXXXI.

NÁREDA:—A debt contracted before partition by an uncle, or a brother, or a mother, for the support of the family, all the parceners or joint-tenants shall discharge*.

If it were intended that an interval of suspension should also be understood in this case, the enunciation of the present text would be vain; for that sense was already conveyed by the preceding text (CLXXV). It is therefore evident, that the three texts of NÁREDA relate to distinct subjects, as follows: a father being dead, his sons shall discharge his debt (CLXIX); a debt must be paid, after the lapse of twenty years (CLXXV); a debt contracted before partition by a father or kinsman for the support of the family, must be *immediately* paid (CLXXXI).

This

* See Book V. v. 371.

This text, expressing "before partition" as well as "for the support of the family," cannot have the same import with that which prescribes a time. But the first text (CLXIX) relates to a debt contracted by the father on his own sole account; in that case only is a lapse of time required.

But, says MISRA, CHANDÉSWARA holds, that a debt contracted before partition by a father or kinsman, who travels to a foreign land whence his return may be expected, must be paid by his son or other parcener after waiting twenty years. This however has been hastily said; for, in fact, CHANDÉSWARA had declared in his own work, 'if that father were so circumstanced as to be incapable of participating *in the patrimony*, and his son be not separate in regard to property, his debt must be paid *by the son*; but if the father, though he be so circumstanced, have any several property, it shall be discharged by him alone. Yet, if the father be wholly unable, and the son be able, to discharge the debt, it shall be paid by the son.' Here the expression, "so circumstanced as to be incapable of participating *in the patrimony*," describes the father as indigent in consequence of his exclusion from the patrimony. "Not separated in regard to property" relates to the son; it signifies residing together, and partaking of the same food: the consequence is, that if the father any-how acquired wealth, it would be joint property. Such a father therefore contracts a debt for the support of his *own* family, and travels on account of his affairs to a foreign country, but his return may be expected; in such a case must his debt be paid by his son? and must it be paid after the lapse of twenty years, or within that period? On these questions the rule formerly mentioned must be adduced; for no distinction has been stated. Consequently it shall only be paid after the lapse of twenty years.

Since no time is specified in the text of VRĪHASPATI (CLXXVIII), should not the debt of a man blind from his birth or the like be paid without waiting a lapse of time? However the law may be in that case, still, when a father is afflicted with a fever, or similar disorder, and his son is not separated in regard to property, it appears from parity of reasoning, that the debt shall only be paid by his son after a lapse of twenty years; without distinguishing whether it were contracted for the support
of

of his family, or for the borrower's own use. Such appears to be CHANDÉSWARA'S notion.

On this we remark, that, although no limitation have been expressed, there is no difficulty in restricting the text (CLXXV) to debts which have been contracted on the borrower's sole account; for, as it does not express a debt contracted on his sole account, so likewise it does not express a debt contracted for the support of the family. However, even in that case it must be supposed that payment cannot be expected *from the debtor himself* within ten or fifteen days. In fact it must only then be paid when the burden devolves on the son. That virtually is the meaning.

VRĪHASPATI propounds a special rule in respect of undivided parceners.

CLXXXII.

VRĪHASPATI:—A debt contracted by the father acting for his coheirs shall be all paid by the son, if the father have been long abroad; but if the father die, the son shall pay only the share of his father, and never that of another debtor.

Five brothers live together, and partake of the same food; one, acting for all, contracts a debt on his own judgment, or with the consent of all, for the support of the family, and afterwards travels to a foreign country; the other brothers are alive, and incompetent *to the management of affairs*, or they are not living; and the absent brother has, or has not, made a partition with his brethren: in such a case that debt must be paid by his son out of the common stock; on failure of that, out of his proportionate share; or, on failure of that again, out of his own *several* property.

“A debt contracted by one acting for his coheirs;” since all are equally bound for that debt: or, *it may be literally interpreted*, contracted by one *of the coheirs* serving as umbrage to screen *the others* from ardent *distress*. Payment by the son is ordained, provided the father be living; but if he die, the son shall only pay

pay the share of his father, and not the shares of his uncles and the rest. The meaning is this: while he lives, the acts done by his son are in a manner done by the father himself; hence payment then made is on the part of the father; consequently, the debt contracted by the father alone is virtually paid by him alone, and a contribution of shares is not therefore proper in that case. But, when the father is deceased, the debt contracted by him for the support of his own brothers and the rest, should, on failure of him who actually contracted the debt, be paid by those only for the support of whom it was contracted: this is *clearly* settled. That proportion of the debt, which was contracted by the father for the maintenance of his own immediate dependants, must be paid by his son; not the shares of the rest; he is exonerated by the Sage, because the burden had not yet devolved on the son at the time when the debt was contracted.

In the *Vivāda Chintāmeni* the text is read, *pitarnam* the debt of his father, instead of *pitransam* the share of his father. If that reading be authentick, it may still be expounded, 'the share of the father in the debt.'

CLXXXIII.

NĀREDA:—Any one surviving parcener may be compelled to pay another's *share of a* debt contracted by joint-tenants; but, if they be dead, the son of one is not liable to pay the debt of another.

“Joint-tenants;” undivided kinsmen: and this must be understood of a case where the debt was contracted for the support of the family. If it were contracted for the borrower's sole use, the whole debt must be paid by his son alone, as is just. The reason of the law proves this; but to state it at large would unnecessarily swell the work.

But the author of the *Retnācara* thus expounds the text of **VRĪHASPATI** (CLXXII); a debt of the father, for which he was bound together with another jointly and severally, shall be *all* paid by the son, both the share of the father, and the share
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of the joint-debtor, if the father have been long abroad, *and the other joint-debtor cannot be found*; but if the father die, the son shall only pay the share of his father. The same author thus interprets the text of NÁREDA (CLXXXIII); any one survivor may be compelled to pay the whole debt, which was contracted by persons jointly and severally bound; but if all the joint-debtors die, their sons shall pay their proportionate shares of the debt: no one shall be liable to pay the whole. He considers both these texts as relating to a subject similar to that of partnership in commerce.

Here it should be remarked, that if one of five brothers die, but leave a son, from parity of reasoning that son may be impleaded like one of the brothers: this exposition seems reasonable to such men as we are. Here 'die' intends also civil death; for religious mendicity is similar to natural death. A degraded man, who is averse from the requisite penance, is also in effect similar to one naturally deceased.

CLXXXIV.

CÁTYÁYANA :—Among persons jointly and severally bound *for a debt*, whoever is found, may be compelled to pay *that debt*; the son of one *long* absent abroad, *may be compelled to pay the whole debt*, but the son of one deceased *need only pay* his father's share.

Of persons contracting a debt, for which they are jointly and severally bound, if one alone be found, he may be compelled to pay the whole debt; or if a son, whose father has been long absent abroad, be found, he also may be compelled to pay the whole; but if a son, whose father is dead, be found, he can only be compelled to pay his father's share, and not the whole sum.

CLXXXV.

VISHNU :—A debt contracted *jointly and severally*
by

by parceners, shall be paid by any one of them who is present and amenable; and so shall the debt of the father, by *any one of* the brothers before partition; but after partition, they shall severally pay according to their shares of the inheritance.

A debt contracted by parceners, or by persons jointly and severally bound, must be paid by any one of them, who is forthcoming; and so must the debt of the father by any one of the undivided brethren, who is forthcoming; but brothers who have made a partition, shall pay their proportionate shares. The texts of CĀTYĀYANA and VISHNU are thus expounded by the author of the *Retnācara*. He considers the text of CĀTYĀYANA, and part of the text of VISHNU, as relating to a subject similar to that of partnership in commerce. The subject of partnership in commerce may be thus exemplified: four traders, severally subscribing their names to the same written instrument, with one accord contract a debt for the purpose of traffick: in like manner four priests may contract such a debt for the support of their families or the like. The commentator considers the last half of the text of VISHNU as relating to the payment of their father's debt by brothers.

Both these texts may also be expounded as relating to debts contracted by undivided brethren, like the text of NĀREDA and VRĪHASPATI. In their result both interpretations of the text are accurate. The texts of CĀTYĀYANA and VRĪHASPATI are obviously applicable to subjects similar to that of partnership in trade; for they literally express "a debt contracted under the same shade," and "among persons sheltered by the same shade." The text of VISHNU is obviously applicable to undivided brethren, since it expresses "a debt contracted by parceners."

If five brothers have the same abode, and partake of the same food; and one then contracts a debt for the support of the family, with the assent of the rest, or from his own judgment, and dies or travels to a foreign land; afterwards all *the survivors* make a partition, and by accident become poor, but are subsequently enriched by wealth which they themselves acquire: in such a case, who shall pay that debt? out of what property?

CLXXXVI.

VIII
188
MENU :—If the debtor be dead, and if the money borrowed was expended for the use of his family, it must be paid by that family, divided or undivided, out of their own estate.

“Dead” is illustrative of *civil death and the like*. “Out of their own estate ;” hence, if any one of the heirs, though they be separate from each other, contract a debt for the support of persons whom all the heirs are obliged to maintain, and die, or be unable to discharge the debt, it must be paid by all the heirs.

The *Retnācarā*.

It is stated in this gloss, that partition had been made before the debt was contracted ; there is this difference *between the gloss and the case supposed*. But in fact both are right. Accordingly CULLÚCABHATTA says, if he who contracted the debt be dead, and the money were expended for the support of the families of all the brethren, as well divided as undivided, that debt must be paid by the divided and undivided brethren out of their own property.

If that debtor be living, he must pay the debt out of the *joint* estate of all *the brethren* ; or if it be true that they have no assets, he must pay it out of his own property. Should any one of them die leaving no son, what would follow ? Since the word “share” does not occur in the text of MENU, the whole debt must be paid *by the survivors* : this is a settled rule. It appears that the whole debt shall be paid by the survivors, out of the estate of the deceased ; or, on failure of that, out of their own property. But it must not be deemed inconsistent with reason, that a debt contracted by one brother for the maintenance of divided brethren, should be paid by another brother out of his own property ; for it is similar to the case where a debt contracted by one of the associated traders must be paid by another. In this case, the creditor need not wait twenty years, as has been already mentioned. It is thus declared by VRĪHASPATI and other Sages, that the son must pay the debt of his father : CÁTYÁYANA distinguishes sons.

CLXXXVII.

CLXXXVII.

CĀTYĀYANA :—On the death of a father, *his debt* shall in no case be paid by his sons incapable from nonage of conducting their own affairs ; but at their full age, *of fifteen years*, they shall pay it in proportion to their shares ; otherwise they shall dwell hereafter in a region of horror.

The father's debt must be understood. "By his sons incapable from nonage of conducting their own affairs;" by infants unable to discharge the debt. Such in effect is the sense. Consequently, if it can be paid by any persons during minority, it must be paid even during their minority: but how could it be paid during infancy and total incapacity? "At their full age;" at the age when they are able *to pay*. As a share of the father's heritage is received by a son whose father was joint-tenant with his own brothers and the rest, but who is himself separate, so must a proportionate share of his debt be paid by that son. But if his father were separate from his own brothers and the rest, or if he had no brothers, the whole debt contracted by him must be paid by the son. To explain these and similar distinctions, laws have been propounded. This text of CĀTYĀYANA is intended to show, that those whom former texts have declared liable to the payment of debts, must pay them at their full age. Consequently "father" is here illustrative of a general sense. How should a debt, though contracted by the party himself, be paid during a period of disability? But a debt contracted by his father and the rest, is still more distant.

“ Otherwise,” if they do not pay it at their full age, the sons and the rest shall dwell hereafter in a region of horror. It appears therefore, that sons and the rest are positively bound to pay such debts. NÁREDA declares the same necessity.

CLXX XVIII.

NÁREDA:—Even though he be independent, a son
incapable

incapable from nonage of conducting his affairs is not *immediately* liable for debts.

The same:—Fathers desire male offspring, for their own sake, *reflecting*, “this son will redeem me from every debt whatsoever due to superior and inferior beings:”

2. Therefore, a son begotten by him should relinquish his own property, and assiduously redeem his father from debt, lest he fall to a region of torment.
3. If a devout man, or one who maintained a sacrificial fire, die a debtor, all the merit of his devout austerities, or of his perpetual fire, shall belong to his creditors.

“Independent;” separate. It is consequently intimated that there is no other person, such as undivided brothers and the rest, amenable for the payment of that debt. He who has neither father nor mother is deemed independent, as will be mentioned. Hence a minor son is bound to pay the debt: but in that case only a delay is allowed by NÁREDA. Such is the import of the text.

“Whatsoever” relates to the “debts due to superior and inferior beings.” What is due to deities, holy sages, and progenitors, is a debt due to superior beings; debts due to men are due to inferior beings. But HELAYUDHA, considering this as solely relating to debts due to human beings, expounds the terms, degrading debts *due* to creditors. In the *Retnácara* it is remarked, that they are degrading by reason of the extreme sin consequent to debts undischarged.

But MISRA cites the text of CÁTYÁYANA (Book III, Chap. iv, V. 15): it is therefore his opinion, that an independent son, or one who has neither father nor mother, and is not under the age of sixteen years, is liable for the payment of debts. It may be here noticed incidentally, that “until his sixteenth year” signifies to the *nearest* limit of his sixteenth year: consequently he is a minor until the close of his fifteenth year. The construction

struction of the text is this: 'an adolescent is also called a minor.' But *strictly* the term (*pōgenda*) is applicable only to a child under the age of ten years, agreeably to the text cited by SRĪD-HARASWĀMĪ.

Infancy extends to the fifth year, childhood is limited to the tenth: adolescence continues to the sixteenth year, when puberty *commences**.

"Under eight years," or before the commencement of his eighth year, he is an infant (*śiśu*): and he also is a minor, *but distinguished from an adolescent*. Another is also distinguished, called a young infant (*cumāra*) to the commencement of his fifth year; agreeably to the *same* text cited by RAGHUNANDANA, "infancy extends to the fifth year." The use of this distinction regards penance or expiation and the like. But here minority must be taken to the end of the fifteenth year; and this must be understood of a computation by vulgar or *jāvanah* time, from the day of his birth. Afterwards he is adult or competent to affairs, as is expressly declared by CĀTYĀYANA. But a certain author has remarked, that if a youth become conversant with affairs before that age, in consequence of auspicious fortune merited in a former existence, or if a youth remain unacquainted with affairs beyond that age, through ill auspices, both these should be considered accordingly *as adult or as under age*. But Sages have mentioned an age near to which puberty may be expected.

From all this detail it appears that the son shall also dwell hereafter in a region of horror, if he do not redeem his father from debt.

CLXXXIX.

VRĪHASPATI:—A housekeeper shall discharge a debt
U 3 contracted

* A part only of the verse was here cited. The distinctions may be thus recapitulated: a minor (*bāla*) is in early infancy to the end of his fourth year, and called *cumāra*; in law he is an infant to the end of his seventh year, and in this period of his life is called *śiśu*; he is called a boy (*pōgenda*) from his fifth to the end of his ninth year; and his adolescence as *cisōra* continues from the tenth to the end of the fifteenth year.

contracted by his uncle, brother, son, wife, servant, pupil, or dependants, for the support of the family *during his absence*.

It is here implied, that a debt contracted even by others for the support of the family, must be discharged by the housekeeper.

The *Retnâcara*.

The meaning therefore is, that since the terms conclude in the plural number, which conveys the sense of "and the like," *therefore* maternal uncles and the rest, as well as other persons, are comprehended in the text. The principle of the law may be here stated: should a son competent to affairs be at hand, a debt contracted by divided brethren or the like, unauthorized by him, is not valid: but in the case of parceners, if any one of five brothers forbids the contracting of the debt, and is able to support the family by other means, the debt contracted by another brother is due by the borrower alone, and shall not be paid by him who opposed the debt. Yet if the money so borrowed be used by him who opposed the debt, or by his dependant, being unable to supply sufficient funds for the support of the whole family, or of his own immediate dependants, it must be discharged by him. A little has been thus mentioned on a wide subject. In fact the whole relates to fraudulent practice. Yet if he who resisted the debt, maintain his dependants out of the money borrowed against his consent, without any fraudulent practice, he must nevertheless discharge the debt.

CXC.

✓ 111
167
MENU:—Should even a slave make a contract *in the name of his absent master* for the behoof of the family, that master, whether in his own country or abroad, shall not rescind it.

"A slave;" a mancipated servant and the like. "That master," literally the senior, but here signifying his lord.

The *Retnâcara*.

By the term used (*jyâyas*) is signified best, as well as eldest; but

but here, metaphorically, the master. This is expressed in the gloss, “but here signifying his lord.” In fact, he is best, or pre-eminent, since he supports the family.

CXCI.

NÁREDA :—Whatever debt has been contracted for the use of the family by a pupil, an apprentice, a slave, a wife, or an agent, must be paid by the head of the family.

“An agent ;” one who acts *in his service*. “A debt ;” money taken up *on loan*. The *Retnácara*.

“A pupil ;” one who learns texts of scripture. “An apprentice ;” a student *in general*. “A slave ;” born in the house of his master or the like. “An agent ;” a hired servant or other person who has engaged in service for a day, a month, or the like. By this text it is declared, that a debt contracted for the behoof of the family, by any person whomsoever connected with that family, is valid.

CXCII.

VISHNU :—*A debt of which payment has been previously promised, or which was contracted by any person for the behoof of the family, must be paid by the housekeeper.*

“A debt” must be here supplied. A debt, even though contracted for the purposes of traffick, but of which payment has been promised by the housekeeper, must be paid by him ; but a debt contracted for the benefit of the family by any person whomsoever shall be paid by the housekeeper. Such is the exposition of the *Retnácara*. “Promised” here signifies “of which payment has been promised.”

CXCIH.

CÁTYÁYANA:—What has been borrowed for the benefit of the family, or during distress, (while *the principal* was disabled, seized *by the king*, or afflicted with disease,) or in consequence of a foreign invasion,

2. Or for the nuptials of his daughter, or for funeral rites; all such debts contracted by *one of the family*, must be discharged by the chief *of that family*.

“Chief” is in the sixth case with an active sense. It must therefore be discharged “by the chief” *of that family*.

The *Retnâcara*, RAGHUNANDANA, and others. “Disabled;” happening to be then incapable of earning wealth. “Seized, or afflicted with sickness,” (*grīhita-vyādhitē*); “seized,” that is, seized by the king; the terms “seized” and “diseased,” are joined in apposition: the sense therefore is, while the principal is confined by the king for some offence, or is afflicted with disease. Or the apposition may be in the form named *carmadhāraya*, the first term being *grīhī* housekeeper, and the last term *itah* gone, as in the example, ‘having bathed and being smeared *with sanders wood*,’ or in the same form of composition, but resolvable into this sense, “and that housekeeper be gone,” that is, be absent. By the import of the word housekeeper, the religious anchoret is excluded; for an anchoret does not return to his house. Since he could not discharge a debt, the term taken generally would be unmeaning; therefore it is limited by the annexed term, housekeeper.

Or the text may be read *grīhita-vyādhicē*, contracting a disease; an apposition in the form called *bahubrihi*, instanced in the expression “a monkey ascending a tree.” Should the principal be so circumstanced, a debt contracted by any person connected with him, (the text must be so supplied,) is *a debt* contracted during distress. All such debts must be paid by the chief of the family: this construction will be suggested by the subsequent verse.

verse. A debt may also be contracted by a person unconnected with him, employed by one who is connected with him: such is the practice.

“ In consequence of a foreign invasion;” a debt contracted for the purpose of expatriating by one who absconds through fear of a foreign prince, is *a debt* contracted during distress. “ For funeral rites;” for the obsequies of a parent or the like.

Consequently, the chief of the family being disabled, a debt contracted by any person connected with him, for the support of that family, for guarding against the violence of a king, for the cure of a distemper, and (if *grīhita* be expounded absent householder) for defraying the travelling charges of one who wishes to expatriate with the view of acquiring wealth, for relief from a general calamity, for the celebration of a daughter’s nuptials, or for the performance of obsequies for a parent or the like, must be paid by that chief of the family. Such is the sense. It is illustrative of a general meaning, and intends any debt contracted for the accomplishment of some business, which being omitted even in consequence of poverty, sin or calamity must ensue.

Grīhitam vyādhité is a reading found in some places, particularly in the *Dāyatatwa*: the sense is obvious; “ *contracted during sickness.*”

The principle of the law should be noticed: in the case of a daughter’s nuptials, for so much expense only as preserves from infraction the usage of the principal’s family, may another contract debts; not for the celebration of splendid nuptials: the whole of what is borrowed for unauthorized expenses, must be paid by the borrower; but expenses which are suitable to the usage of his family must necessarily be admitted by a master able to discharge them. Consequently, should he be seized with a distemper, or unwarily go to a foreign land, a debt may be contracted by any person connected *with him*, to defray the expenses required for such a purpose, as estimated by five persons. This may be apprehended by the wife.

Must a debt contracted for the behoof of the family, without the consent of the principal, be paid by him or not? On this point CĀTYĀYANA propounds *a text already cited* (IX).

A debt contracted by a son, a slave, and the rest, even without

out the assent of the absent principal, for the maintenance of his family, that absent principal must discharge : this BHŔĪGU approves. Such is the construction *of the text* (IX).

CHANDÉSWARA.

Here it should be noticed, that, in the expression “even without his assent,” the word “even” connects this case with that of assent. For instance ; the chief of a family intending a journey to a foreign country, thus addresses his son, servant, or the like : “the family must be maintained by thee, contracting debts, or otherwise obtaining funds ;” or he went abroad with such an intention *unexpressed* : in these cases his assent is declared or implied. But, if it be not so, he does not assent ; still, however, the debt must be discharged by the chief of the family.

CXCIV.

NÁREDA :—A father must equally pay the debt of his son, contracted either by his own appointment, or for the support of his family, or in a time of distress.

“A time of distress ;” a season of calamity. The *Retnácara*.

This shall be here discussed : when a father, afflicted with a disease, remains altogether at home ; and his son, slave, or the like, contracts a debt for the support of the family, but with the knowledge of the father ; must the debt be in that case paid by the father or not ? It is answered, three disjunctive particles occurring in the sentence, “either by his own appointment, &c.” his own appointment and the rest are stated as three grounds of payment, mutually unconnected. Consequently, since *the borrowing* for the support of the family is unconnected with the father’s appointment, that debt must be discharged by the father in the case proposed. In like manner, “absent,” in the preceding text (IX), is illustrative of a general sense.

It might be here observed, that, if the principal, when he went abroad, or when he was himself seized by a distemper or the like, forbade the contracting of debts, but his son or the rest, flighting his commands, contract debts for the support of the family,

mily, those debts need not be paid in such cases by the father ; for there can be no representative in a matter expressly forbidden by the principal : and “ unforbidden ” must be supplied in the texts which notice debts contracted for the support of the family. Let it not be objected that inconsistency with approved usage must follow, since a master, thus relieved from distress by money borrowed by his slave, even though forbidden by himself, would be exonerated from that debt. The money has been expended by the compassionate slave or lender, for a moral purpose. If the loan were made for the sake of accumulating wealth, why did the party lend it in breach of an express prohibition ? For this fault, the loss may fall on the slave, or on the lender.

Again ; if the master of the family forbid the contracting of debts by his son and the rest for the support of his family, and the son or other person, flighting that prohibition, do contract debts and support the family, still the same rule should be affirmed. It must, however, be admitted, that the chief of the family is guilty of the offence consequent on refusing support to his family. In fact, that debt should in such a case be discharged by the master of a family, who strives to observe a virtuous conduct ; but the king shall not compel him to pay it. Such in effect is the sense. However, it is a great sin on the part of him who travels to a foreign country, *previously* forbidding the contracting of debts, without considering the necessary end of supporting his family. Here the fourth particle (*vá*) has a connective sense, for it is declared that the particle *vá* denotes disjunction, comparison and connection. Consequently the full meaning is, that the father ought to pay all such debts.

CXCV.

CÁTYÁYANA :—What a man has promised, in health or in sickness, for a religious purpose, must be given ; and, if he die without giving it, his son shall doubtless be compelled to deliver it*.

That

* Cited in Book IV, Chapter iv. at V. 3, and there expounded as relating to gifts.

That concerning which a man has declared, "this sum must be paid by me to that man;" or, in other words, what a man has promised, his son shall be compelled to deliver; but, if he die after delivering it himself, it shall not be *again* paid by his son: this the Sage declares, "if he die without giving it." It is intimated, by the expression "for a religious purpose," that the son is under no necessity of delivering what has been promised to harlots or the like. The text is expounded by JÍMÚTAVÁHANA and others as relating to this subject.

But we thus expound it: the master of the family being gone to a foreign country, or diseased, or the like, a debt contracted by his son, his servant or the like, and made known to him, must be paid by the chief of the family when he returns from that foreign country, or recovers from the disease. But if he die without paying it, the debt must be discharged by his son, or by the successor to the estate, or other person liable to the payment of it; on failure of the first respectively, by the next in succession. "For a religious purpose," or from a religious motive; that is, with a view to the strict observance of duty: the construction is, he must pay it on that account; meaning, that otherwise duty is violated.

By all this detail the obligation on a son to discharge his father's debt has been propounded. The payment of a debt contracted for the support of the family has been incidentally mentioned. A distinction in regard to the payment of debts by a grandson shall be now delivered.

CXCVI.

CÁTYÁYANA:—A debt of the paternal grandfather, which is proved, or which is partly liquidated, must be discharged *by the grandson*; but never shall a debt contracted for immoral uses, or which was contested by his father, be paid *by the grandson*.

"Proved;" established by evidence. "Which is partly liquidated;" which his father had begun to pay, but of which a balance

balance remains due. "Contracted for immoral uses;" incurred for losses at play, for spirituous liquors or the like. Sums due for losses at play, for spirituous liquors and the like, shall be subsequently noticed. "Contested by his father;" which he disputed, averring that it was not due by him. Such a debt need not be paid by the grandson, according to the *Retnâcara*.

"Or which is partly liquidated;" the particle may here bear a connective sense. It consequently connects the debt partly liquidated with that which is proved to be due. But, in fact, "partly liquidated" is mentioned as confirming the certainty in respect of the debt. Accordingly another text, cited in the *Retnâcara*, omits the terms "balance of a debt liquidated."

CXCVII.

CĀTYĀYANA: — BHRĪGU ordains, that a debt devolving from the grandfather, which was proved, and acknowledged by the father, must be discharged by grandsons, if it were not contracted for immoral uses, nor *already* paid by the sons.

2. The rule shall be the same in regard to the debts of the grandfather, which have not been discharged by *other* grandsons, nor by his *own* sons: but a debt of the grandfather shall be paid by his grandsons without interest.

"Proved;" established by evidence. "Not contracted for immoral uses;" not incurred for losses at play, for spirituous liquors and so forth. "Nor *already* paid;" not *already* discharged.

A debt of his grandfather, not paid by the sons of the eldest son, nor by his own father or uncles, must be discharged by another grandson. Such is the sense of the second verse. But a certain author proposes a reading on the second measure of this verse, *na dattam vâpi tat swatah*, instead of *na dattam vâpi tat futaih*; and expounds it, a debt of the grandfather, which has not been already paid or acquitted by the grandfather himself, nor
by

by his sons*, the father and uncles *of the person in question*, must be discharged by the grandson. “*Swatah*” has the sense of the third case.

CXCVIII.

CĀTYĀYANA :—After the death of his father, debts *of his grandfather* must be carefully discharged by the grandson; but a debt contracted by an ancestor is not recoverable from the fourth in descent.

A debt which was originally contracted by the fourth ancestor or great grandfather, reaching his descendant, namely the great grandson, recedes, *or is not recoverable*: the great grandson or remoter descendant need not discharge it. Such is the *literal* sense according to the *Retnācara*. It follows, of course, that the son or grandson must discharge it.

CXCIX.

NĀREDA :—An undisputed debt of the grandfather, which has been successively due by him and his sons, but has remained undischarged by them, shall be paid by his grandsons; but it is not recoverable from a person who is fourth *in descent from the debtor*.

“Successively due;” due by the grandfather and father consecutively. The *Retnācara*.

A debt contracted by the grandfather, affects him in the first place, next his son, and lastly his grandson. “Proved,” which occurs in preceding texts, has been explained ‘established by evidence.’ In what does the proof consist?

CC.

* We must therefore read in the first measure “*putraib*” by sons, instead of “*pautraib*” by grandsons.

CC.

CÁTYÁYANA :—But should a considerable sum be claimed, so much only as the creditor or claimant may prove by the evidence of witnesses, shall he recover as a just debt.

If a considerable sum be claimed; if the claimant aver, “so much was borrowed of me by this man, or by his father, or his grandfather,” and the borrower, his son, or grandson, answer *the plaint* by denying its truth, so much only as the creditor justifies by the evidence of witnesses, or proves to be due, shall he recover from the debtor; not the whole sum which he claimed, *but does not prove*. Such is the explanation, according to the *Retnâcara*. Hence, if a large sum be claimed, and part be proved and part unproved, it is not right to affirm that the whole claim is false, because it was partly false. This is declared *by the text*.

“By the evidence of witnesses;” a mere instance of evidence in general. CHANDÉSWARA.

Since it is not specified from whom it shall be recovered, it follows, that the whole of what is proved must be paid by him, whoever he be, by whom such debts ought to be paid. But it must be paid without interest by a grandson, as has been already noticed. On failure of a grandson, the great grandson, or other person who succeeds to the estate, must be understood in the regular order of succession to heritage. VÁCHESPATI MISRA here observes, that such debts only as would be payable by a son, shall be paid by another heir and the rest: but it shall be paid by these without interest; for interest has not been ordained in this case. Such only is the distinction.

What debts of the father should be paid by a son, MENU declares by excepting others (CLI).

“Money due by a surety;” this is restricted to sureties for appearance or for honesty. The *Retnâcara*.

Consequently surety in the second verse denotes also *the surety for good behaviour*.

“Idly promised;” an unprofitable gift *promised*.

The *Retnâcara*.

It

It in effect signifies a gift promised with no view to a moral purpose.

MENU :—For religious purposes, gifts are made to priests; for the sake of fame, to musicians and actors.

“Lost at play (CLI);” due in consequence of gaming. It consequently signifies any debt contracted for a stake in playing with dice, or for the purchase of things used in gaming. If a fine to the king be incurred by gaming with dice, and that fine cannot be paid without contracting a debt, should the offender contract a debt for that purpose, shall it be discharged *by his son* or not? The answer is, although that debt be occasioned by gaming with dice, yet, being contracted in a time of distress, it must be discharged. “Due for spirituous liquors;” in consequence of drinking spirituous liquors; borrowed for the purpose of *buying* intoxicating liquors, and so forth.

This is restricted to money due on these accounts by persons not authorized to game or drink spirituous liquors.

The *Retnâcara*.

Gaming is authorized by the system of law on the festival called *Dyûtapratipet*; and the use of spirituous liquors is authorized by law on the celebration of the sacrifice named *Sautrâmenî*; to certain mixed classes the *constant* use of spirituous liquors is allowed by custom: a debt contracted by the father for these purposes, in such circumstances, must be paid by his son. Such is the notion suggested in the *Retnâcara*.

“What remains unpaid of a fine or toll;” for instance, a fine being due to the king for some offence, if the father die after paying half the amount of that fine, the balance shall not afterwards be paid by his son. ‘Nor what remains unpaid of a toll.’ Toll signifies a duty of custom payable at wharfs and the like. For example: the father, having obtained indulgence on the grounds of friendship or the like, has only discharged half of the regulated customs which are paid to the king’s officers by traders resorting to markets or the like on the business of traffick; returning home he happens to die: in that case, the remainder
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need not be paid by his son. The same term (*śulca*) also signifies a nuptial present given to a bride at the time of her marriage and the like.

CCI.

VRĪHASPATI:—The sons are not compellable to pay sums due by their father for spirituous liquors, for losses at play, for promises made without any consideration, or under the influence of lust or of wrath; or sums for which he was a surety, *except in the cases before mentioned*: or a fine, or a toll, or the balance of either.

Sums due for spirituous liquors, or losses at play, money idly promised, and the balance of a fine or toll, have been already explained. A promise made under the influence of lust, or under the influence of wrath, shall be subsequently explained.

The *Retnācara*.

MISRA expounds presents idly made, presents idly promised. He conceives, that were they actually given, they must necessarily be delivered, because the property of the father is divested.

CCII.

GÓTAMA:—Money due by a surety, a commercial demand, a toll, the price of spirituous liquors, a loss at play, and a fine, shall not involve the sons *of the debtor*.

Debts originating in suretiship, commerce and the rest, shall not involve the sons; they shall not be paid by the sons of the debtor.

The *Retnācara*.

This appears, on a cursory view, to be the purport of the gloss: a debt incurred by becoming a surety (for instance, a man has become surety, and the debtor dying, the sum becomes due by the surety; a debt so incurred), a debt contracted for commerce,

for a toll, for spirituous liquors, for a loss at play, for a fine, need not be paid by the son of the debtor; he shall only discharge a debt incurred on a moral consideration, or for an usual cause, or for the support of the family.

VÁCHESPATI MISRA expounds "sums for which he was a surety," sums due by a debtor, for whose appearance or honesty he was surety; these, and sums become due by the father in commerce or the like, shall not involve the sons. He expounds the text, sums due by a surety for the appearance or honesty of the debtor, because he thinks the son of a surety for payment must necessarily discharge the debt, under the text of MENU (CL). Money due in commerce may be thus instanced: some person, making a contract with this man's father, delivered certain sums of money to him, as the price of barley or the like, on an agreement in this form, "I shall receive an advantage above the quantity which may be equivalent to the sum advanced at a price to be arbitrated by five persons:" the vender dies, after delivering to the buyer goods equivalent to the advance at the arbitrated price; the remainder need not be delivered by the son. Again: the price of spirituous liquors, the cost of dice and the like, a stake at play, a fine originally small, or the balance of a large fine, need not be paid by a son after the death of his father.

Both these opinions shall be discussed: and first, the gloss of the *Retnācara*. Since the word "debt" does not occur in the text of GÓTAMA, what should suggest "a debt contracted in consequence of suretiship?" It would be inconsistent with the reason of the law. If the father were surety for payment, the debt, though contracted by a stranger, must be paid by his son; as is ordained in the system of jurisprudence: how can it be reasonable that the son should not in this case discharge the debt though actually contracted by his father? It is also said, that a debt contracted on a commercial account, need not be paid by the son: how can that be pertinent? Why should not the debt be paid by the son, who participates in the benefits of that traffick, or is *at least* naturally competent to benefit by it? If the term (*śulka*) be explained a nuptial present instead of a toll, it has been already mentioned, that a debt, though contracted by another on this account, must be admitted by the master of the family; why should not the son admit such a debt contracted by his father? If it be explained

explained a toll payable at a wharf or the like, that is a cause consistent with usage *and good morals*; it appears, therefore, that it ought to be paid. Why should not a debt contracted for the payment of a fine be discharged by the son? Since a man atones for his crime by paying the fine, a debt contracted to discharge a fine is contracted on a moral account. Let it not be objected, that this text, being placed under the title of Debt, positively concerns debt alone; and, since it is a rule not to strain a text, even money borrowed, or otherwise due, on account of a fine, need not be paid by a son. In his gloss on the text of MENU above cited (CLI), CULLÚCABHATTA says, after the death of his father, a son is not liable for the payment of a fine or toll, or the balance of either, which was demandable from his father. He does not say, that a debt contracted on account of a fine need not be paid.

CCIII.

VYÁSA also declares:—Neither a fine, nor a toll, nor the balance due for either, shall be *necessarily* paid by the son of the debtor; nor any debt for a cause repugnant to good morals.

On this text the authors of the *Retnâcara* comment: since the balance of a fine is suggested by the *general* term “a fine,” and is nevertheless repeated, the sense must be, that if the amercement be great, it must be paid, but not the small arrear of such a fine; but if the amercement be small, no part of it need be paid *by the son*: consequently “fine,” in this text, signifies an inconsiderable fine; and “toll,” an inconsiderable toll. In like manner, since VYÁSA and MENU have noticed, under the title of Debt, fines and the like which are not debts, it is not reasonable to explain the words fine and toll, which occur in the text of GÓTAMA, as signifying debts contracted for such causes. Consequently “debt,” in the gloss of the *Retnâcara*, signifies *money due, or sums similar to debts*. It therefore coincides with the gloss of MISRA. Or the text of GÓTAMA may be expounded in this manner. The terms *may be connected*, and signify a com-

mercial toll, or duties payable at wharfs and the like. "Commercial toll" may nevertheless intend nuptial presents also.

The expression in the text of VYÁSA (translated "any debt for a cause repugnant to good morals") is explained by MISRA, 'excluded from usual causes.' Consequently that debt which is contracted for some civil purpose consistent with the prescriptive usage of good men, must be paid by sons and the rest; but if it be the reverse, it need not be discharged.

In fact, the import of the expression used by VYÁSA is this: after the death of the father, a fine due by him need not be paid by his son; surely the balance of a fine need not be paid: but if the son, erroneously paying a fine to the king, have left some part of it undischarged, and be now impleaded by any man, that fine, due by the father, was not payable by the son, and therefore he shall not discharge the balance of it. Nor shall he receive back what he had paid to the king: the second term is only propounded to forbid the payment of a mere balance. The difficulties which will be noticed, may be accordingly removed.

They are as follow: among the many various fines ascending to the highest amercement, it is difficult to determine which shall be deemed considerable, which inconsiderable: and no reason appears why an inconsiderable fine should not be paid, and why a considerable fine should be paid. Again; if a very small part of the greatest fine have been paid by the father, it is agreed on all hands that his son shall not be compelled to discharge the remainder: but in another case, he must discharge the whole fine due by the father, amounting to somewhat less than that *greatest fine*; which forms a great disparity. This and other *objections may be urged*. A debt contracted for the making of a garden, pool, or the like, undertaken on religious considerations, must be considered as incurred for religious purposes. It appears that a debt contracted for the structure of a house, a garden, or the like, to be enjoyed by future generations, or for increase of wealth by *commerce*, must be paid by a son who enjoys the benefit of it, or is competent to enjoy it. Even a debt contracted for the sake of wearing delicate apparel and the like, must be paid by a son, since it has not been enumerated among debts which he need not discharge. This is right. Some, however, think that this, like money idly promised, need not be paid by the son.

Here

Here an incidental observation may be made: when a man, unable to make immediate payment of tolls due at wharfs or the like, gives a surety to the king's officer, and both the merchant and surety afterwards die, it shall not in that case be paid by the son of the surety; for there would be great disparity in requiring from the son of the surety payment of that which need not be paid by the son of the merchant himself. Consequently, whatever must be discharged by the son of a debtor, that only need be discharged by the son of a surety for payment.

CÁTYÁYANA explains promises made under the influence of lust or of wrath.

CCIV.

CÁTYÁYANA:—What a man has promised, with or without a writing, to give to a woman who had another husband before, let the judge consider as a debt contracted under the influence of lust:

2. But what has been promised to gratify resentment, by hurting *another*, or destroying *his* property, let the judge consider as *a debt* incurred under the influence of wrath.

Hence the rule cannot be strained.

MISRA.

Consequently, when the expression, "incurred under the influence of lust," is taken in its literal sense; what is promised by a man to his own wife might be considered as a debt incurred under the influence of lust: to prevent such wrest, CÁTYÁYANA has propounded this particular explanation.

What has been promised, with or without a written engagement, to a woman who had another husband before, or, if that suffice not, what has been borrowed and given to her, is a debt contracted under the influence of lust. The expression, "a woman who had another husband before," intends only a woman not *legally* married to the giver.

The *Retnâcara*.

Is not that which is promised to a woman who had another husband before, alone considered as granted under the influence of lust?

lust? why should the author add, “borrowed and given to her?” The objection is ill-founded, since “debt” would be unmeaning. “Not legally married,” signifies not legally married to the party himself. Consequently, whatever is promised, or borrowed *and given*, for the abduction of a woman with whom intercourse is criminal, must be considered as a debt incurred under the influence of lust.

The second verse is explained in the *Retnâcara*; what is borrowed to give away for the purpose of destroying another’s property, or injuring another man through resentment, is a debt incurred under the influence of wrath. Here debt must be understood to complete the similarity between engagements made under the influence of lust and of wrath. The construction therefore is, “that which has been so promised let the judge consider as a debt incurred under the influence of wrath.” It was first promised, and afterwards borrowed and given. Hence, resentment being roused by mutual contention in respect of some effects, one promises them to priests, declaring, “I will give this to a priest;” not being able to give away those effects, he wishes to give the value of them, but, unable to give it out of his own property, contracts a debt; that debt might be considered as incurred under the influence of wrath. To prevent such wrest, CÂTY-ÂYANA has propounded this explanation.

These alone are called promises made under the influence of lust or of wrath before the debt was contracted.—The *Retnâcara*.

The meaning of the gloss may be thus explained: when money has been promised to an adultress, or promised to gratify resentment by injuring another or the like, it is cursorily explained, that such are promises made under the influence of lust or of wrath. Consequently, a debt contracted to fulfil such a promise, and money so promised, need not be paid by the son or other heir. But we explain “a debt contracted under the influence of lust,” an obligation similar to a debt so *incurred*; the similarity consists in the contract of payment. Consequently that only which was promised for the sake of enjoying an adultress, constitutes an obligation incurred under the influence of lust. Accordingly SÚLAPÂNI has delivered the following comment on a text of YÁJNYAWALCYA.

CCV.

YÁJNYAWALCYA:— A son need not pay, in this world, money due by his father for spirituous liquors, for lustful pleasures, for losses at play; nor what remains unpaid of a fine or toll; nor any thing idly promised.

Debts of his father incurred on account of spirituous liquors, or for the enjoyment of another's wife, or undertaken on account of gaming, for a fine, or for duties at wharfs and the like, a son need not pay. "Father" is here illustrative, suggesting also his mother. 'SÚLAPÁNI.

Here the expression, "incurred for the enjoyment of another's wife," excludes a debt contracted from a money-lender; else the author would have said, money borrowed for the sake of obtaining another's wife.

The author of the *Mitácshará* has this gloss: a debt incurred by a drinker of spirituous liquors, or under the influence of lust for the sake of enjoying a woman, or caused by losses at play, what remains due of a fine or toll, and money idly promised, that is, promised to impostors, bards, or wrestlers; (for it is declared, "Fruitless is a present given to an impostor, a bard, a wrestler, a quack, a flatterer, a knave, a fortune-teller, a spy, or a robber;") all such debts incurred by the father, his son, or other heir, need not pay to the vintner and the rest.

It appears from the expression, "to the vintner and the rest," that the price of spirituous liquors and the like, due by the father, need not be paid by the son to the vintner and the rest. But in fact the interpretation suggested in the *Retnácara*, that even a debt contracted for such purposes need not be paid by the son, should be admitted; for the phrase, which occurs in the text of VYÁSA, "nor any debt for a cause repugnant to good morals," shows that such debts need not be discharged by the son. But MISRA has said nothing expressly on this subject.

Yet a debt contracted by a father, for the payment of a fine to the king, ought to be discharged by his son; for the last term, in the following text, is expounded dominion over the senses and a

fine imposed by the king ; and because a fine has a moral purpose since it expiates guilt.

CCVI.

MENU :—By open confession, by repentance, by devotion, and by reading the scripture, a sinner may be released from his guilt ; or by almsgiving, by dominion over the senses, or by a fine to the king (for the word *dama* admits both senses).

If a fine be an atonement, even the balance of a fine ought necessarily to be paid by a son ; why have Sages ordained, in contradiction to the reason of the law, that it shall not be paid ? The objection is ill founded ; for the fine is cancelled by becoming a religious anchorite on the approach of death, and by other means. All authors have directed penance, not the payment of amercements, to expiate guilt, which is inferred from an actual disease to have been contracted in a former existence. Accordingly the fourth measure of the text cited (CCVI) is in some copies read, “ or by almsgiving in case of his inability *to perform the other acts of religion.*” It is, however, reasonable, that the balance of a fine should be paid by the son, if his father be absent ; but, since the son is not his own master, the king cannot exact it by forcible means, or the like. This is a demonstrated inference.

In general it is settled that a debt contracted by a father shall be paid by the son with interest, or, on failure of him, by the grandson without interest : but all agree that only such debts as have not been excepted by any Sage need be paid. Therefore, a debt contracted for an immoral purpose, and money promised for such a purpose, or idly promised, or promised to the king or other person for the liquidation of a fine or the like, and so forth, need not be paid. Such is the full meaning of the law. Other debts must be paid by the successor to the estate, and the rest in order, on failure of persons first liable. But MISRA holds, that they shall be discharged without interest ; he assigns as a reason, because it has not been declared in this case, as in that of a son, that interest shall be paid. CHANDÉSWARA,

SÚLAPÁNI,

'SÚLAPÁNI, and the rest, have not expressly noticed this point. To that *inference* it may be *therefore* objected, that every Sage, who ordains the payment of debts by a grandson, declares that they shall be discharged without interest: but some Sages have directed that a debt shall be paid with interest by the son *of the debtor*; others have not noticed the question of interest: consequently, as no legislator has ordained payment with interest by successors to the estate, so none have ordained payment without interest; the rule being therefore general, what then should inhibit payment with interest? This subject has been sufficiently discussed.

CCVII.

YÁJNYAWALCYA:—Neither shall a wife or mother *be in general compelled to pay* a debt contracted by her husband or son, nor a father *to pay* a debt contracted by his son, unless it were for the behoof of the family; nor a husband *to pay* a debt contracted by his wife.

CCVIII.

VISHNU:—Neither shall a wife or mother *be in general compelled to pay* the debt of her husband or son, nor the husband or son *to pay* the debt of his wife or mother.

CCIX.

NÁREDA:—A debt contracted by the wife shall by no means bind the husband, unless it were *for necessities* at a time of great distress: a man is indispensably bound to support his family.

2. A wife or mother shall not *in general* pay the debt of her husband or son.

This last hemistich is cited on the authority of MISRA.

Unless it were contracted for the support of the family at a time of great distress, a debt incurred by a wife shall not bind her husband : that is, it need not be paid by her husband.

The *Retnâcara*.

Both these texts of VISHNU and the other *legislator* relate to a wife of unequal class : but a wife of equal class must pay a debt contracted by them, even though experiencing no distress. Wives of unequal class are prohibited in the *Cali*-age ; a text concerning the wife of equal class will be cited under the title of Inheritance.

BHAVADÉVA.

This is liable to objection. Why is the general term " wife " taken in a limited sense ? Since it is a rule that " what might be supposed is excepted," what might be proposed generally in respect of any person or thing, is alone specially excepted as relating to that person or thing. For instance : it being stated generally that a father's debt shall be discharged by his son, an exception is made, that a debt contracted on account of gaming shall not be paid. But in this case there is no such supposition. Why then is an exception propounded ? It is answered, that Sages have excepted these cases, apprehending the hasty supposition that payment might be required, because these persons are not unrelated to the debtor, and are naturally competent to take his assets. For example : the text above cited (CLXVII 2) is illustrative of a general sense, and comprehends great grandsons, daughter's sons, and the rest. Consequently, a debt shall not in general be paid by any other than a son, or a son's son ; yet it must be discharged by heirs of every description, if they have received assets. YĀJNYAWALCYA propounds an exception.

CCX.

YĀJNYAWALCYA :—A debt acknowledged *by her husband*, or contracted by her jointly with her husband or son, or contracted by the woman herself, must be paid by a wife *or mother* ; no other debts shall a woman be compelled to pay.

" Acknowledged ;"

“Acknowledged;” fully acknowledged. The *Dīpacalīcā*.

It consequently signifies a debt admitted by her husband at the point of death.

“With her husband or son :” the particle is connective, and includes her son also : hence, a debt contracted jointly with her husband or son, must be paid by a wife or mother. For instance : her husband and son being incompetent *to the management of affairs*, and the woman herself being very active, she contracts a debt jointly with them : such a debt is meant. Or, the husband and son being incompetent, or being unable *to act* by reason of other occupations, she uses their names, or contracts debts in her own name from a moneylender : in either of these cases the debt is contracted by the woman herself.

CCXI.

CĀTYĀYANA :—A debt contracted jointly with her husband or son, or singly by the woman herself, shall be paid *by a wife or mother* ; in such and in no other cases shall the debts contracted by them be paid by her.

CCXII.

NĀREDA :—If a wife be thus addressed by her lord at the point of death, *or just before a long journey*, “such a debt must be paid by thee,” she must pay it, however unwilling, if assets were left in her hands.

“Debts contracted by them ;” debts contracted by her husband and son. The *Retnācara*.

If the assets of the husband have been received by his wife, she must pay the debt, “however unwilling ;” that is, even though she do not promise to pay it. But if the wife, so instructed by her husband at the point of death, in these words, “my debt must be paid by thee,” do promise to discharge it, she must then
pay

pay it, even though assets were not left in her hands. Such is MISRA's opinion; and he expressly declares it: 'a debt, acknowledged by her husband, must be paid by a wife; and so must a debt be paid by a childless widow, who has accepted the care of the assets, even though she have not accepted the burden of the debts; for she is successor to the estate.' It must be therefore understood, that the debts of her husband must be discharged by the widow, who has accepted the care of the assets, under the text of YÁJNYAWALCYA (CLXXI).

This appears also to be the opinion of CHANDÉSWARA; for he says in the *Retnâcara*, "at the point of death" is illustrative of a general meaning. It therefore comprehends also one who intends a journey to another country, or retirement in another order. But even an instruction incidentally addressed to the wife by her husband, though not diseased or the like, requiring her to pay this debt, must be considered as given with a view to the probability of decease. This and other points must be considered.

CCXIII.

NÁREDA:—A childless widow must pay the debt of her sister enjoining payment; or whoever receives the assets left by that sister, must pay her debts.

On the death of one of two sisters left as coparceners in the house of their father, who had no male issue, the debt of that sister must be discharged by the surviving sister enjoined to pay it. Such is the sense of the first hemistich. Or any other who takes the succession must pay that debt. The *Retnâcara*.

VRĪHASPATI also directs, that a father should pay a debt contracted by his son.

CCXIV.

VRĪHASPATI:—A debt contracted by a son shall be paid by the father, if he promised payment; or he may pay it from affection to his son: but unless he promise, he cannot be compelled.

" If

“ If he promised payment,” or *authorized the contracting of the debt* ; for instance, if the father told the creditor “ lend money to my son,” or if he told his son “ borrow money to maintain your own grandmother.”

“ From affection to his son :” having contracted a debt unauthorized by his father, the son dies ; if his father, reflecting, “ should the debt remain unpaid, my son will go to a region of horror,” be disposed to discharge the debt through affection to his son, he may pay it ; but otherwise he need not pay it : consequently, a debt contracted by a son need not be paid by his father, unless spontaneously, or in consequence of a promise.

CCXV.

CĀTYĀYANA :—By the general rule of law, a father need not pay the debt of his son ; but he must pay it, if, either at the time of the loan, or afterwards, he promised payment.

“ Promised” here signifies stipulated at the time of receiving the loan ; but promised after receiving the loan is conveyed by the expression “ subsequently agreed to,” or promised afterwards. Son is here taken illustratively. *The Retnācara.*

These terms consequently fall within the sense of the expression used in the text of VRĪHASPATI, and the texts therefore coincide. “ Illustratively ;” even a debt contracted by a wife or the rest, must be paid by her husband and the rest, if he gave previous or subsequent assent, and the wife or other debtor be unable to discharge it, or die. Here the word “ son ” being considered as illustrative of a general sense, it may comprehend presumptive heirs of the same person, who live together, and partake of the same food.

It is reasonable that the debt of a wife should in some cases be paid by her husband.

CCXVI.

YĀJNYAWALKYA :—If the wife of a herdsman, a vintner,

vintner, a dancer, a washerman, or a hunter, contract a debt, the husband shall pay it; because his livelihood chiefly depends on the labour of such a wife.

CCXVII.

VRĪHASPATI :—The husband, being a vintner, a hunter or fowler, a washer, a herdsman, a shepherd, or the like, shall pay the debt of his wife: it was contracted in the concerns of the husband.

These husbands shall be compelled to pay the debts of their wives. “Because” should be here supplied; and the construction is, because those debts were contracted by them in the concerns of their husbands. Consequently, a debt may be contracted by a wife in the concerns of her husband, if they require such a debt.

CCXVIII.

NĀREDA :—Except the wife of a washer, hunter, herdsman, or vintner; for the livelihood of such a husband, and the support of his family, depend on her.

This must be connected for interpretation with the text above cited (CCIX 1), in this manner; a debt contracted by a wife, excepting the wife of a washer, &c. shall not be paid by her husband. The reason is subjoined: and here again “because” must be supplied; or the second particle has the causal sense.

Here “washer” and the rest are mentioned indeterminately. In fact, whatever be his class, if the husband’s livelihood depend chiefly on the labour of his wife, he must discharge a debt contracted by her, whether he be a priest or a washer: but he whose livelihood does not depend on his wife, whether he be a washer or a priest, shall not pay his wife’s debt. This is noticed by MISRA: *he says*, ‘in other cases also, wherever the wife

wife has the chief management, there is no restriction of class; the wife alone conducts all affairs, the husband is absolutely ignorant of every transaction.' Accordingly it is observed, that, in the province of *Cāmarūpa*, almost every civil transaction is now conducted by women.

But this is merely a vague description; for a debt contracted by the wife of a *Brāhmaṇa* and so forth, for the support of the family, must also be paid by the chief of that family. From the reason assigned, "because his livelihood chiefly depends on the labour of such a wife," it appears that any other persons, of whom the livelihood depends on the labour of their wives, must pay the debt contracted by those wives. This is admitted in the *Mitācsharā*. CHANDÉSWARA also makes the same observation; 'the circumstance of his livelihood depending on the labour of his wife, is particularly intended; not any restriction of class.'

Here it should be remarked, that they are only mentioned approximately; for, the husbands being constantly occupied in washing clothes, attending cattle and the like, and therefore unable to provide necessaries for consumption; and such being the practice of certain *other* persons, the providing of necessaries, like *other* household business, is conducted by their wives alone. It is the same also in respect of husbandmen and the rest. However, a debt contracted by any married woman, who presides over her husband's household, for the support of her own brother's family, need not be paid by the husband, any more than the debt of a father contracted under the influence of lust; but other debts contracted by his wife must be paid by the husband.

CCXIX.

CĀTYĀYANA:—A debt which is contracted by a wife or mother for the behoof of the family, when her husband or son is gone to a foreign country, after authorizing *the loan*, must be paid by the husband or son.

If a husband or son, intending a journey to a foreign country, and being asked by his wife or mother for food and raiment,
tell

tell her, "contract debts;" the debt contracted by her must be paid by him when he returns to his own home. "After authorizing the loan" is an approximate expression; for, even though he did not authorize it, the reasoning would be the same.

The *Retnâcara*.

The meaning is, if he go abroad without making provision for her food, vesture, and the like. "When he is gone to a foreign country," is also illustrative of a general sense; the same rule should be admitted even though he remain at home. As is mentioned in the *Retnâcara*; 'if he remain at home, or go abroad, without assigning any subsistence to his wife or mother.' This again is merely illustrative; hence such a debt, even though contracted by a minor son or daughter, must be discharged.

Here an observation may be made: a debt contracted by a mother for religious purposes and the like, must be discharged by her son. Suppose a man whose son is an infant, and whose wife has contracted a debt jointly with her husband, but he dies, and his son inherits his property; in that case, by whom should the debt be paid? By the son alone, for he is under a double obligation to discharge the debt: *under a civil obligation*, because he holds assets; *under a moral obligation*, because he is son of the deceased. But, if the debtor leave no assets, what should follow? It is replied, the son nevertheless ought to pay the debt; for redemption from debt is stated as the benefit arising from male offspring alone, since the text of NÂREDA (CLXXXVIII) describes the wish for male offspring as originating in the wish to be liberated from debt: sensual delights and male offspring are described as the benefit accruing from a wife, by a text of the *Câlicâ purâna*, "a wife affords delight and male offspring;" consequently, if there be a son produced by her, why should the wife, who has afforded other benefit, discharge the debt? It is accordingly remarked in the *Mitâcsharâ*, that 'a debt contracted by a wife jointly with her husband, must, on failure of the husband, be paid by the wife, if she have no male issue.'

Thus the divine CÂLIDÂSA says in the *Raghuvaṇśa*, "bliss in another world, and purity in this, spring from devotion and alms; but progeny of a pure race contributes to prosperity in the other world as well as in this." And again, in the same work; "thinking oblations will be hardly obtained after me, *the manes*

of

of my ancestors taste the water, which I regularly offer, warmed by their sighs*.” Of those passages the meaning is this: in another world, prosperity or auspicious fortune, that is, the bliss of heaven, is attained; in this world, auspicious fortune, that is, the discharge of debts, is obtained: meaning debts to the deities, to progenitors, to holy sages, and to men. The second verse is a speech of a mighty king named DILÍPA, who was childless. It has this meaning: water has been presented in the form of oblations to ancestors by me DILÍPA; but my ancestors taste the water warmed by their sighs: he assigns the cause of their sighs; after me DILÍPA it will be difficult to obtain *oblations of water*: reflecting, “by whom will it be presented, since he has no son,” they emit warm sighs. Therefore, wanting progeny, ancestors also sigh with sorrow. It is hereby indicated, that *the birth of a son* relieves *ancestors* from this misery.

If there be both a great grandson who has succeeded to the estate, and a widow, what should be ruled? There is no difficulty in that case, because whoever takes the estate of the deceased, must also maintain those whom the deceased was bound to support. Since food and raiment must necessarily be furnished to the widow; from parity of reasoning, money sufficient to discharge the debts of her husband, which are payable by her, must also be supplied. But if the debtor leave no assets, his great grandson does not succeed to any estate: the widow, however, has several property, such as jewels and the like; the debt should in that case be discharged by her out of that property, for Sages have declared her liable to the payment of debts. This and other points may be reasoned by the wise. VISHNU also declares, that debts must be paid by those who take the assets.

CCXX.

VISHNU:—He who takes the assets of a man leaving no male issue, must pay the sum due *by him*; and *so must* he who has the care of the widow left by one who had no assets.

VOL. I.

Y

“ Sum ”

* The verses are only quoted in part; I insert the translation at large.

“ Sum ” (*dhana*) here signifies debt; the same term in the subsequent phrase, “ who had no assets ” (*adhana*), signifies wealth. The *Retnācara*.

Two sons have succeeded to the estate on the death of the father; in his life time the father had commanded one son to pay a certain debt; what is the rule of decision in that case? Although both be equally successors and sons of the deceased, that son only who received the injunction must pay the debt; for he is bound to fulfil his father's commands. But if the other son, considering it as a moral duty, spontaneously give his proportionate share, it should be accepted: else, how could the moral obligations of that other son be fulfilled; for, he who received the injunction should fulfil his father's commands without distressing the second son. Yet, if the second son delude his brother by this declaration, “ I am my father's son as well as he, I therefore will pay my proportionate share of the debt,” and do not pay *his share* of the debt to the creditor, it must be fully discharged by him who received the command; for his father, dreading immoral consequences, gave the order through apprehension of such deceit or the like. If a father, in such a case, give land or similar property to any one son with such an instruction, surely the debt must be discharged by him alone; and he shall take the whole property given by his father *on this consideration*, and his proportionate share of other property left by his father. The subject has been further discussed already.

On failure of persons holding assets, he who has the care of the wife must pay the debt, under the rule of VISHNU (CCXX) and text of YÁJNYAWALCYA (CLXXI). NÁREDA declares it with a particular explanation.

CCXXI.

NÁREDA:—He who possesses the last of disloyal wives, or the first of twice married women, must pay the debt contracted by her husband.

The sense is this: of four sorts of women wilfully libidinous, or unloyal, her who is last or fourth in the enumeration; and of

of three twice married women, her who is first described: he who takes *either of* these two women shall pay the debt contracted by the husband, and not the debt contracted by the husband of any other woman. CHANDÉSWARA.

Consequently, he who takes a twice married woman of the second or third description, or a disloyal wife of the first, second, or third description, shall not pay the debt contracted by her husband. The *same* legislator propounds the distinctions of twice married women and disloyal wives (Book IV, v. 158.)

If a man wed a girl whose marriage has been already celebrated but not consummated, he must pay the debt of her first husband, because he has taken in marriage a girl already espoused by another.

That girl who is tacitly or expressly contracted to one man by her parents, considering the laws of the district, or reflecting, "the laws of our country are not violated by giving the damsel to that man, though ugly;" ("laws" are in the plural number with a comprehensive sense, including the laws of families and laws in general;) if such a girl contract an affection for another man, handsome or rich, *and wilfully accede to him*, she is considered as the second twice married woman. The text (Book IV, V. clviii 3) is also read *utpannasāhesā* instead of *utpannāsāhesā*; this reading the author of the *Mitācsharā* explains, "becoming disloyal."

If the same kinsmen, tacitly or expressly affiancing a damsel to one man, but deluded by beauty or the like, give her in marriage to another, she is considered as the third twice married woman. The distinction between the second and third arises from this difference, *that in one instance the second marriage is the act of her kinsmen, and in the other it is not the act of her kinsmen*. In these cases, since the first husband had not *actually* received the damsel, the debt contracted by the first husband shall not be paid by her second lord. By "parents" and "kinsmen" must be here understood her father, paternal grandfather, or other persons, who have a right to dispose of her in marriage.

Whether she have borne children, or be childless, (intimating generally one whose marriage has been consummated,) a woman who clings to another man during her husband's life, through

through lust, (or avarice, or any irregular appetite,) is the first disloyal wife.

Her husband being living, she, who deserts him, and gives herself to another man, saying "I am thine," but afterwards returns to her first husband, again saying "I am thine," is the second. She is distinguished from the fourth, because, in respect even of her wedded husband, she is a woman previously enjoyed by another.

After the death of her husband, a woman, living in his family, whether unguarded or guarded, who receives the caresses of another, through carnal desire, is the third disloyal wife. In fact, she is similar to the first, but distinguished by the circumstance of her husband's decease, whereas the husband of the first was living. "Leaves his brother or other kinsmen" (Book IV, V. clviii 7); that implies, that she so acted, though opposed by her husband's brother and the rest: it denotes her sinning in secret.

Or the phrase, "leaves his brother or other kinsmen," may intend the case of troth verbally plighted; and the term "brother or kinsman" may comprehend every *sapinda* of equal class. Thus, if the affianced husband of a girl, who was tacitly or verbally given in marriage, die, and she receive the embraces of a stranger, or a person not related within the degree of a *sapinda*, she is considered as the third disloyal wife; not as a twice married woman. This may be understood from the ambiguous terms of the text. But if she receive the embraces of a man of equal class on failure of *sapindas*, she is a twice married woman of the second description. For in the definition of the third twice married woman (Book IV, V. clviii 4) the terms "*sapinda* of equal class" occur. Thus some expound the texts.

On this we remark, that, after the death of her husband, if a woman, previously authorized by him, receive the embraces of his brother for the sake of male offspring, there is no offence: hence it is specified, "through carnal desire," and, "who leaves his brother or kinsman." If she pass by his brother or kinsman, and receive the embraces of another man of equal class, in conformity to the directions of her husband, there is no offence: therefore does the Sage specify, "through carnal desire." But if she receive the caresses of her husband's brother or kinsman,
being

being impelled by lust or the like, *and not solely guided by the duty of raising up offspring*, still there is no offence : this is also intimated by the text, “ who leaves his brother or kinsman.” Such a practice actually subsists among some people in particular districts. Yet, in fact, the procreation of a son on the wife of a kinsman is forbidden in the *Calī*-age.

[“ The procreation of a son by the brother of a deceased husband must in the *Caligae* be avoided.”] *

In this text also, "carnal desire" is an instance denoting likewise avarice and other irregular appetites.

“She who having received *injunctions*” (Book IV, V. clviii 8); who has been told by her kinsmen, receive the embraces of such a man; if she take as a husband any other man than him whom her kinsmen assigned, is the fourth disloyal wife: and so is one purchased for money, or impelled by hunger or thirst. Consequently, the several phrases, “having received injunctions” &c. may be taken either conjointly or separately. This sense is denoted: a woman, having lost her husband, but desirous of wedlock, gives herself to some man; she is the fourth disloyal wife: and if a woman, whose husband is living, desert him, and cling to another, but do not return to her *first* husband, she also may be considered as a disloyal wife of the fourth description. This text not specifying, “after her husband’s decease,” and the preceding text expressing (Book IV, V. clviii 6) “but returns to the house of her lord,” there is no confusion.

Since he enjoys with a previous title this woman, who is another's wife, he must pay the debts contracted by her husband: and this must be considered as exclusive of an unmarried harlot.

CCXXII.

CÁTYÁYANA :—A debt which has been contracted
by

* The text here partially quoted is nowhere cited at large. Similar texts are cited in the fifth book. See likewise Book IV, v. 157, and a general note to the translation of *MENU* (v. 3).

by indigent and childless vintners and the rest, must be paid by him who has the care of their wives.

Under the term “and the rest” are comprehended *all* persons whose livelihood depends on their wives. MISRA.

“Wives” being here mentioned in the plural number, disloyal wives of every description are suggested. Consequently he who possesses the wife of a deceased vintner or the like, assimilated to property, because she is able to support the family, must pay the debt of her husband. This is ordained by the text, and should not be controverted. Accordingly the following text of NÁREDA has a suitable import; otherwise it would be a needless repetition of the preceding text (CCXXI).

CCXXIII.

NÁREDA:—He who approaches the widow of an indigent man leaving no male issue, must pay the debt of her husband; she is considered as his property.

And this seems to have been the opinion of CHANDÉSWARA. Accordingly he says, ‘this text of NÁREDA also has the same import with the text of CÁTYÁYANA’ (CCXXII). That again is a proper construction; for in the texts of CÁTYÁYANA (CLXXIII 2), of NÁREDA (CLXXII), and of VRĪHASPATI (CLXXIV), the expression, “he who takes the widow” (*strībhāri*), exhibits the verb *bhri* in the sense of possession; and in the text of YÁJNYAWALCYA (CLXXI), and rule of VISHNU (CCXX), the similar expression (*strīgrāhi*) exhibits the verb *grab* in the sense of caption or occupancy; but here (CCXXII and CCXXIII) the verbs *bhuj* and *in*, preceded by the inseparable particle *upa*, (in the words *upa bhōctā* and *upaiti*,) signify enjoyment and approach. The preceding text of NÁREDA (CCXXI) does not propound the obligation on him who takes the widow to pay the debt of her husband; but the obligation on him to pay the

the debt on failure of heirs and sons, having been already stated (CLXXII), it propounds a special rule. There is consequently no objection to take the radical *as'* (of the word *samaśnutē*) in the sense of enjoyment or possession (CCXXI). Accordingly NÁREDA adds, "she is considered as his property" (CCXXIII); he benefits by the wife of the deceased, through the wealth brought with her. Or the relative, used adverbially in that phrase, denotes the woman. But he who enjoys the widow is only liable on failure of a guardian of the widow, and on failure of sons and grandsons not competent *to the management of affairs*. However, it is held, in the *Retnácara* and other works, that this rule of decision concerns only those women on whose labour their husbands depend chiefly for their livelihood. The same opinion is almost expressly delivered by the author of the *Mitácshará*. In the last case and in this, the difference between him who takes the widow, *or becomes her guardian*, and him who enjoys the widow, *or becomes her paramour*, is evidently the same as between a man who has the care of another's land, and one who has the enjoyment of it.

But some hold, that one text (CCXXIII) propounds generally the payment of debts by him who takes the widow; the other text (CCXXI) ordains specially the payment of debts by him who takes the widow *under particular circumstances*: there is consequently no *vain* repetition. CÁTYÁYANA directs payment by him who has taken the widow, if there be a son living, but incompetent *to the conduct of affairs* (CLXXIV 2); in another text (CCXXII) he directs that the debt of one who had no male issue, or whose son is deceased, shall be paid by him who has the care of the widow: there is consequently no *vain* repetition. It follows, that he who enjoys a disloyal wife of another description, need not pay her husband's debt.

That is liable to objection; for the preceding text of NÁREDA (CLXXII) would contain a needless repetition of the text last cited (CCXXIII). That point should be examined. This description of women is greatly blamed by legislators. That the wives of *Bráhmanas*, and other virtuous women, do not so act, may be learnt in the discussion of the Duties of Man and Wife.

When a son competent *to the management of affairs* is living, and there is also a guardian of the widow, the debt must in ge-

neral be paid by the son alone, as has been already mentioned. From this rule CĀTYĀYANA propounds a particular exception.

CCXXIV.

CĀTYĀYANA:—Should a widow, who has several property, take the protection of another man without the assent of her son, her property may be seized by that son, if there be no daughters :

2. He may seize it to discharge debts, but never for his own gratification, since he cannot compel his parents to pay any thing for an improper cause.

3. Of that woman who has male issue, but deserts her son though opulent, MENU declares that her son may take the peculiar property, and discharge therewith his father's debts.

“ Without the assent of her son ;” or against his consent, “ Who has several property ;” who has considerable female property. “ If there be no daughters ;” on failure of daughters.

The *Retnācara*.

The meaning is this : if a woman, possessing several property, take the protection of another man against the consent of her son, that son may seize her property, but he can only do so when he is unable to discharge debts out of his own property, and not for his own gratification, since he cannot compel his parents to pay any thing for an improper cause ; that is, he cannot possess himself of the property of his father, or of his mother, for the accomplishment of an unfit purpose. Here the discharge of debts is merely an instance of indispensable duties. The debts may be his own or his father's. But he can only do so if there be no daughter ; for, should there be daughters, they are entitled to their mother's several property : and this supposes female property, such as presents given at the bridal procession, and on other occasions : the distinctions of *such property* will be noticed in the chapter on the Property of Women, under the title of Inheritance,

heritance. It may be here noticed, that her recourse to another man must be considered as equivalent to the natural decease of the mother. But, at the option of the son, her title to several property may depart or subsist, under the authority of the text (Book V, V. ccccv 1 and 2).

If a woman, deserting her son, though capable of *protecting her*, take her several property, and recur to another man without the consent of her son, that son, seizing even her several property, may discharge debts therewith : such is the sense of the third verse (CCXXIV 3).

By the expression "though opulent" it is shown, that if she desert an indigent son, assuredly that son may seize her several property.

The *Retnâcara*.

"Who has male issue" describes the woman. From the particle in the phrase "seizing even her several property," it follows, that if any part of his patrimony have been taken, assuredly he may seize that. The debt *to be paid* should be the debt of his father ; for the text specifies "his father's debts." *The commentator says*, "assuredly that son may seize her several property ;" here "for the payment of debts" should be subjoined : and this is evident from the text. The term *translated* "opulent," but literally signifying "capable," here imports possessing wealth ; "incapable" signifies moneyless. The difference is this : if she deserted an opulent son, he can only seize her several property for the discharge of his father's debts ; but if she abandon an indigent son, he may seize it for payment even of his own debts. But, if the woman have no several property, the son alone must discharge the debt. This NÂREDA declares.

CCXXV.

NÂREDA : — But *if* a woman who has male issue, *but no several property*, desert her son, and recur to another man, her son alone must pay the whole debt of her *deceased* lord.

If she desert an opulent *or capable* son, and take the protection
of

of another man, without *carrying* any former property, her son alone must pay the debt contracted by her *deceased* lord.

The *Retnâcara*.

Consequently the construction is, her son is liable for, and must pay, the debt of her lord ; and that, provided the son be competent *to the conduct of affairs* ; else he who takes the widow would be liable for the payment of debts : hence the commentator adds “capable or opulent.” It has been declared (CLXXII), that a son not competent *to the management of affairs* must discharge the debt on failure of a guardian of the widow ; by this text it is declared, that a son competent *to conduct affairs* must discharge the debt, although a man have taken the widow : consequently there is no vain repetition. The debtor being dead, his son competent *to manage affairs* must pay the father’s debt out of the several property of his adulterous mother, or out of his own property, whichever may be practicable : this is shown by what has preceded.

CCXXVI.

NÁREDA :—But if a woman take the protection of another man, carrying her riches and her offspring, he must pay the debt of her husband, or abandon such a woman.

“ Carrying her riches ;” possessing considerable wealth. “ Her husband ;” her wedded lord. Or, to avoid the payment of the debt, he must abandon such a woman, who brings her offspring and her wealth.

The *Retnâcara*.

CCXXVII.

CÁTYÁYANA :—If a woman, having an infant son and much wealth, seek another protector, he whose protection is taken must pay the debt *of her husband* : this law is declared in respect of women who have infant sons.

Here

Here the term employed (*bhartri*) signifies one who maintains her, *not one who marries her*. "Seek," or recur to 'for support:' the text should be so supplied. Consequently the guardian to whom the mother of an infant son, but possessing much wealth, recurs for the support of her son and herself, must, if he accept the trust, pay the debt of her husband out of her property; or, paying it out of his own property, he shall afterwards obtain reimbursement. Such is the sense of the text: and he must also maintain both the mother and son. There is no vain repetition of the preceding text (CLXXIII). And in this case, the guardian does not take the assets; for the woman alone has the care of the goods. Thus we explain the law.

When the debtor is living, but is mad, has been long absent in a foreign country, is an idiot or the like; in a word, is incapable of discharging debts: in that case, his debt shall be paid by his son alone, as has been already mentioned. But if he have no offspring, what should be ruled? On this point the same legislator propounds a law,:

CCXXVIII.

CĀTYĀYANA:—The debts of men long absent in a foreign country, of idiots, madmen, and the like, who have no male kindred, and of religious anchorites, must be paid, even during their lives, *but without interest*, by such as have the care of the *debtor's* wife and goods.

By such as have taken the wife and the goods appertaining to a man long absent in a foreign country, and so forth: and this must be understood, according to circumstances, as intending also outcasts and the like.

Many Sages have declared generally, that the debt must be discharged by him who takes the wife of the debtor; a special rule is here propounded. A man has two wives; one, taking her offspring and her wealth, gives herself to another man, saying "I am thine;" and the other, who possesses no wealth, takes the protection

tection of a guardian ; what is the rule of decision in this case ? It is answered, since he who takes the wife with effects in fact holds assets, the debt must be discharged by him ; but if both be in the same situation, it must be paid in equal proportions by both. This is the import of the former text (CCXXVI). But if the receipt of effects were previously unknown, and the creditor exacted immediate payment from him who had the care of his debtor's wife, after which the receipt of effects is discovered, then indeed the payment made by the guardian of the wife is not legal, because it was exacted from a person not justly liable : he may therefore recover his money from the creditor, and the creditor shall obtain his due from him alone who holds assets : the holder of assets may be compelled to reimburse the guardian of the wife. Such is the proper mode of adjustment in forensick practice.

A case may be here stated. A certain dishonest surety for payment asked a loan of a money-lender, in the name of a certain borrower ; and the lender, fixing stipulated interest at the rate of two *pañas*, sent the loan to the borrower through the hands of the surety. Bringing the sum borrowed, the surety told the borrower, "he will not lend the money without stipulated interest at the rate of four *pañas*." Urged by distress, the borrower agreed to that interest, and accepted the loan. At the time of payment, the debtor delivered to the surety the sum due on a computation of interest at the rate of four *pañas* ; but the surety paid the creditor at the rate of two *pañas*. After a few days the whole circumstances were discovered. The creditor therefore demands the greater interest from the surety ; the debtor also claims the excess from the surety ; and the surety refuses to pay it to either of them. What should be the rule of decision in this case ? The answer is, the creditor can have no right to receive greater interest than such as he stipulated when he made the loan ; the surety is not entitled to obtain interest on another's money ; it is therefore reasonable that the debtor should recover the sum erroneously paid.

It should not be asked objectively, why should not the debtor pay the interest stipulated by him, for the sake of preserving uprightness in his dealings ? Deceived by the surety's words, the debtor made the promise before the surety, not before the creditor. That promise only, which was made by the surety, as his representative, in the presence of the creditor, is efficient ; not the promise
 originating

originating in error caused by the surety's fallacy. Again; the creditor may have accepted less interest through tenderness excited by the appearance of distress in the debtor; in that case, the remainder shall benefit the debtor alone, for it was in a manner relinquished to him. Yet, if the debtor voluntarily pay it, the other shall receive it by his voluntary act. But, when an intermediate person himself borrows money, and lends it to the *ultimate* debtor, he is not a surety, but debtor to one and creditor of another: in such a case, therefore, he is entitled to the interest at the rate of four *pañās*.

If a debtor had no son born to him, and leave no widow, nor assets, by whom shall his debt be paid? By no one. But if the debtor gave a pledge on contracting the debt, and his great grandson be living, the debt should be paid by that great grandson.

CCXXIX.

YÁJNYAWALKYA:—A debt, secured merely by a written contract, shall be discharged, *from a moral and religious obligation*, only by three persons, *the debtor, his son, and his son's son*; but a pledge shall be enjoyed until actual payment of the debt *by any heir in any degree**.

But if the great grandson do not wish to redeem the pledge, those who would be entitled to inherit on failure of great grandsons, may, in the order of succession, pay the debt and take the mortgaged property. If no one choose to redeem it, the pledgee may continue to enjoy it after acquainting the king; the sum cannot be forcibly exacted from the great grandson or remoter heir, because, not having yet taken the assets, he is not liable for the debt.

This doubt here occurs: if the debtor contracted the debt, giving a pledge for custody only, and he, his son, and his son's son die, but a great grandson survive; in that case the debt need not be paid by the great grandson; for he does not enjoy the
mortgaged

* Already cited at V. xxxviii, 2, and partially at V. cxi.

mortgaged property, and the pledgee is permitted to enjoy property pledged so long as the debt shall remain unpaid (CCXXIX): but the great grandson alone can take the pledge, because it is the chattel of his great grandfather. The apparent difficulty may be thus reconciled: “but property pledged shall be enjoyed” is an expression merely illustrative of a general sense; in the case supposed, the payment of the debt is alone requisite. Or the word pledge may there signify a pledge given in lieu of interest, as well as a pledge not to be used; and *the word* “enjoy” suggests occupancy as well as fruition: hence there is no difficulty. Else it would be inconsistent with reason, that after advancing his own property and safely keeping the pledge for a long time, the creditor should *be obliged to* restore it to the great grandson of his debtor without receiving his due. Since the great grandson or remoter heir holds assets when he has received the pledge, he is bound to pay the debt.

CCXXX.

VRĪHASPATI:—He who, having received a sum lent or the like, does not repay it to the owner, will be born *hereafter* in his creditor's house, a slave, a servant, a woman, or a quadruped

The term here employed signifies a loan. “Or the like” comprehends deposits and so forth. *The Retnācara.*

“To the owner;” to the former master of the sum, that is, to the creditor and so forth. Therefore a debt must necessarily be paid by a son or other descendant, lest his father or ancestor become a slave, otherwise hell awaits him; because he has not followed the conduct prescribed. Thus may the law be concisely stated.

When the creditor is dead, or has become a religious anchorite or the like, the debtor should pay the sum to his son or other heir; on failure of the nearest, to the remoter heir successively down to the learned priest. But if there be no heir, nor any learned priest in that country, or if he refuse the payment tendered, NĀREDA propounds the rule to be observed in that case.

CCXXXI.

CCXXXI.

NÁREDA :—If a creditor of the priestly class die, leaving issue, *the king shall* cause the debt to be paid *to them*; if he leave no issue, to his near kinsman; if he leave none who are near, to those who are distant, *paternal or maternal*:

2. If he leave no heirs near or distant, *nor persons connected by sacred studies*, the king shall bestow it on worthy priests; but if none such are present, let him cast it into the waters: *the debts of other classes, in similar circumstances, he may seize for himself.*

What is due to a priest, whether it be a gratuity or similar claim, or the like, must, on failure of him, be paid to his son, or other descendant in the regular order of succession. That is intimated by the phrase “leaving issue.” On failure of issue, to his near kinsmen; on failure of them, to distant kinsmen, allied to himself, to his father, or to his mother: this will be explained under the title of Inheritance. On failure of these, it should be given to learned priests; or on failure of them, “let him cast it into the waters.” What is due to men of the military and other classes, the debtor should, by parity of reasoning, pay to the heirs in regular succession, delivering it, on failure of nearer heirs, to the next remoter heir down to distant kinsmen: but on failure of these, it must be paid to the king, under the rule of VISHNU concerning hereditary property, “the wealth of all but priests *who die without heirs*, goes to the king (Book V, V. 417).” But the property of priests may on no account be taken by the king. In this MISRA, BHAVADÉVA, and others concur; and BAUDHAYANA, quoted in the *Retnâcara* under the title of Inheritance, *forbids the sacrilege*. That text (Book V, v. 444) is expounded, “the property of *Brâhmanas* is the most exalted poison to him who seizes it.” From the word “never” it appears, that the property of *Brâhmanas* must not even be received in the form

form of a tax. Accordingly, in his gloss on the institutes of PARÁŚARA, MÁDHAVA cites the following texts of MENU.

CCXXXII.

MENU:—A king, even though dying *with want*, must not receive any tax from a *Bráhmaṇa* learned in the *Védas*.

MENU:—The king, having ascertained his knowledge of scripture and good morals, must allot him a suitable maintenance, and protect him on all sides, as a father protects his own son.

The king must allot him (that is, the priest) a suitable maintenance, or the means of subsistence; and protect him on all sides, from robbers, rogues, and the like. However, the direction in the text of NÁREDA, “he shall bestow it on worthy priests, or cast it into the waters,” is a law respecting the payment of debts.

CHAP. VI.

ON

REDRESS FOR NON-PAYMENT.

THIS, according to the author of the *Mitácshará*, may be also considered as the rule for receipt of debts by the creditor.

MENU:—What has been practised by learned and virtuous men of twice-born tribes, if it be not inconsistent with the legal customs of provinces or districts, of classes or families, *let the king establish* *.

“Learned;” well read; AMERA interprets it, wise or intelligent. “Virtuous;” endued with honesty; not deceivers. “Twice-born;” *Bráhmaṇas, Cshatriyas, and Vaiśyas*: what has been practised by such men; if it be not inconsistent with the legal customs of that country, of families and classes, *let the king establish or confirm the practice*, adopting it as unseen or unrecorded law. The text must be so supplied.

CULLÚCABHATTA.

In that gloss the meaning of the expression “confirm the practice” is, that he should decide, according to that practice, a doubtful case, for which no seen or recorded law provides.

CCXXXIII.

MENU :—When a creditor sues before him for the recovery of his right from a debtor, let him cause the debtor to pay what the creditor shall prove due.

“For the recovery of his right from a debtor ;” to obtain the sum lent. The king, on application from the owner of the sum *for the recovery of it*, shall compel the debtor to pay to the creditor what he shall prove due by written or oral evidence or the like.

CULLÚCABHATTA.

On application from the creditor for the recovery of what is due by the debtor, the king shall, by various means, compel the debtor to pay the creditor's right, or the sum which he proves by evidence to be due from the debtor.

CHANDÉSWARA.

In what mode payment should be enforced, **MENU** declares.

CCXXXIV.

MENU :—By whatever lawful means a creditor may have gotten possession of his own property, let the king ratify such payment by the debtor, though obtained even by compulsory means.

“By compulsory means ;” by seizure or distress.

CHANDÉSWARA and CULLÚCABHATTA.

The debtor, or his assets, may be the subject to which that expression refers. The same lawgiver declares the several means by which payment may be enforced.

CCXXXV.

MENU :—By the mode consonant to moral duty, or by the mediation of friends, by suit in court, by artful

artful management, or by distress, a creditor may recover the property lent; and, fifthly, by legal force.

He may recover it by the method last mentioned, if payment cannot be obtained by the several methods first mentioned.

MISRA.

Another mode will be subsequently mentioned. **VRĪHAS-PATI** explains the mode consonant to moral duty.

CCXXXVI.

VRĪHASPATI:—By the interposition of friends and kinsmen, by mild remonstrances, by importunate following, or by staying constantly at the house of the debtor he may be compelled to pay the debt: this mode of recovery is called a mode consonant to moral duty.

By the persuasive discourse of those who are friends and intimates of the debtor, or his kinsmen, such as maternal uncles and the rest; by mild remonstrances or honied language of the creditor himself; by importunate following or pursuit; by staying constantly at the house of the debtor, or by abiding near him, that is, by the creditor's fasting and the like at the house of the debtor; by all these methods the debtor may be compelled to pay the debt to the creditor: this mode of recovery, by the interposition of friends and the like, is called a mode consonant to moral duty. This is merely an instance; it comprehends the interposition of honest strangers with discourse exciting a sense of shame, and so forth.

CĀTYĀYANA explains the mode of recovery by suit in court.

CCXXXVII.

CĀTYĀYANA:—A debtor, being arrested, *and freely*

acknowledging the debt, may be openly dragged before the publick assembly, and confined until he pay what is due, according to the immemorial usage of the country.

The restraint of the debtor by the creditor before the publick assembly, until he pay the sum due, is the mode of recovery by forensick proceeding. *The Retnâcara.*

He may be detained and confined; he may be stopped and prevented from going where he lists, and so confined. "Before the publick assembly;" otherwise he might allege, that he was excessively beaten, and so forth. "According to the immemorial usage of the country;" according to the usage which subsists in that particular country. For example; in some countries creditors cause their debtors to be arrested and confined by the king's officer; in others, they themselves, or their servants, restrain the debtors; in others again, they confine them in fetters.

Or a distinct method of recovering debts is called the mode of recovery consistent with the immemorial usage of the country; or it falls under the description of violent compulsion, and will be hereafter mentioned: "they must be made to pay their debts according to the custom of the country" (CXLII). It is limited by the restriction of the immemorial usage of the country. According to this opinion, the mode of recovery by suit in court, or practice, must be otherwise explained. Thus the *Mêdhâtî'hi* has this remark; 'from a debtor, who is indigent, payment must be obtained by a practical mode; and that practice consists in personal labour, and the like. For instance; a creditor lending a further sum to an indigent debtor, may employ him in his regular occupation, such as husbandry or the like: the produce thereby obtained should be delivered to the creditor.'

This, according to the preceding opinion, is a mode of recovery similar to that of suit in court described by CÂTYÂYANA; it falls under the same description, for the text of CÂTYÂYANA is merely illustrative. In fact, a debtor, being restrained, or being detained for work, otherwise than in the custody of the king's officer and the like, may be employed in his regular occupation, such as agriculture and the like: and in that case, the creditor may not employ a *Brâhmana* in menial service, nor a

Vaisya in military duty ; in some countries he may employ a *Brâhmana* in agriculture or commerce, but he may not employ a barber of a mixed class in carrying burdens. To indicate this and other circumstances, the legislator adds, “ according to the immemorial usage of the country.” That intends also the customs of families, and the usage established by law, and the like. Consequently, the meaning is, a creditor may not employ his debtor in work inconsistent with usage. Again ; in that country where men of certain classes do not carry in a litter men of certain other classes, the creditor may not employ one of such a class in carrying the litter of a man of such other class.

By the phrase “ before a *publick* assembly ” it is intimated, that the persons assembled should interpose to prevent such irregular employment. The possible accusation of maltreatment is thereby obviated, as before. Or the expression “ before a publick assembly ” is intended to suggest the approbation to be obtained from impartial persons, in this form, “ this work, which is not inconsistent with local usage, the debtor must perform ; ” it obviates the possible accusation of infringing the custom. This and other points may be deduced from reasoning.

“ Until he pay what is due ; ” consequently, if the debt were discharged, the creditor must omit the restraint and other measures. This is mentioned *incidentally*, wandering from the real subject.

VRĪHASPATI explains artful management :

CCXXXVIII.

VRĪHASPATI:—When a creditor, with an artful design, borrows any thing of his debtor, or withholds a thing deposited by him or the like, and thus compels payment of the debt, this is called legal deceit.

“ With an artful design ; ” by stratagem. For instance ; the creditor borrows effects of the debtor on such pretences as the following, and thus compels payment of the debt : “ a guest of high rank is come to my house, lend me a metallick caldron for his service ; ”

service;" or on this pretence, "a kinsman of the bride is come to visit the bridegroom, lend me silk clothes, ornaments, and the like, to array the bridegroom."

"Withholds a thing deposited by him;" or any thing subsequently intrusted. For instance; a creditor, who had formerly lent ten *cārshāpanas*, but cannot recover the sum, resolves on using artifice, and the debtor is desirous of borrowing a further sum; the creditor tells him, "I will further lend you fifty *panas* of copper, and you shall pay the whole at once, but you must give a pledge." The debtor, so addressed, delivers a pledge of greater value; and the creditor, giving a small part of the sum, tells him, "I will give the whole sum the day after to-morrow." On that day he delivers the sum diminished by the amount of his former debt, or attaches a sufficient part of the pledge. In such a case he withholds a thing subsequently intrusted. The term "and the like" comprehends deposits and the rest. In such a case, there is not the absolute sin of wronging one who has reposed confidence in him, provided he do not take more than his due.

Again; a dishonest debtor, delivering a pledge for custody only, receives a loan, but refuses to pay the debt at its term; the cunning creditor mentions, in various places, "his pledge, which was in my possession, has been stolen by thieves." On hearing this through successive report, the debtor tenders the principal with interest, and demands his pledge; and that creditor delivers the pledge, *and takes the sum tendered*. In this case the fallacy must be considered as an artifice. Such a mode of recovering debts is called legal deceit. Deceit (*upadhi*) is synonymous with artifice.

VRIHASPATI also explains distress:

CCXXXIX.

VRIHASPATI:—When he forces the debtor to pay by confining his son, his wife, or his cattle, or by watching constantly at his door, this is called lawful confinement.

The method of recovery by the restraint of his wife, his son,
or

or his cattle, or by watching at his door, is called lawful confinement, or distress. This is a mere illustration; the ultimate sense is, 'causing him *to suffer* inconvenience by any mode.' However, that should not be done, by which he may be exposed to great danger. This we hold reasonable.

The same legislator explains legal force:

CCXL.

VRĪHASPATI:—When, having tied the debtor, he carries him to his own house, and by beating or other means compels him to pay, this is called violent compulsion.

Binding him and carrying him to his own house, he may threaten to beat him and so forth; frightened by those menaces, the debtor pays the debt: in such a case, the threat of blows, preceded by confinement, is a mode of recovering debts which is called violent compulsion, or legal force. The carrying of him to his own house is not requisite; for the threat of beating him on the road, or at some other place, is violent compulsion. The binding may be no more than *forcible* seizure; consequently the threat of blows, after catching him by the hair, must be deemed violent compulsion.

Violent compulsion is a mode of recovery defined as consisting in blows and the like, after carrying the debtor to his own house.

The *Retnācara*.

According to this author, even blows are authorized. Under the term "and the like" is comprehended harsh reproof, or verbal abuse and the like.

CCXLI.

CĀTYĀYANA:—By beating, or by coercion, a creditor may enforce payment from his debtor; or by work, by suit in court, or by mild remonstrance: first *duly* deliberating on the method to be followed:

2. Or let him obtain the sum due, by artifice, or distress.

In this text, "beating" signifies legal force, or violent compulsion: "coercion," staying constantly at the house of the debtor, or importunate attendance. The term is so explained in the gloss of the *Retnâcara*: in effect it denotes the creditor himself refraining from food and the like; and that falls within the mode consonant to moral duty, as described by VRĪHASPATI. CHANDÉSWARA explains, "work," or *proper* conduct, by an example: for instance, reflecting, "he is very dishonest, and will not repay the loan he receives from me; I must recover the debt by blows and other suitable methods:" the creditor adopts proper measures. Ultimately it suggests both means, *proper conduct, and obliging the debtor to work*; this *last* falls under the description of mild methods: it does not vary from the sense of MENU's text, or "work" may bear the *literal* sense of labour: it shall be subsequently discussed under the text of YÁJNYA-WALCYA. But "suit in court," which has been explained as a *similar mode*, is also noticed by CÁTYÁYANA. "Mild remonstrance;" affectionate language, with praise and the like. "Deliberating;" determining after due deliberation.

CÁTYÁYANA next declares from what debtor payment should be obtained, in what mode.

CCXLII.

CÁTYÁYANA:—By mild expostulation let a creditor procure payment from a king, from his master, and from a priest; but from an evil-minded man, or an heir, by some artful contrivance.

2. MENU ordained, that merchants, cultivators of land, and artists, must be made to pay their debts according to the custom of the country; but that a creditor might enforce payment from dishonest debtors by violent measures.

"Heir;"

“Heir;” inheritor. In some places the text is read, “BHRIGU ordained.”

He ordained, that merchants, cultivators of land, and artists, must be made to pay their debts according to the custom of the country. The *Retnâcara*.

“A priest,” or spiritual parent: but if any other than a priest happen to be spiritual parent of the creditor, he also is suggested by the word “priest” taken illustratively. Again; the word “priest” (*vipra*) may be taken in the simple sense of venerable, for it has that import; and a person to whom veneration is due from the creditor is meant. Why are the “king” and “the creditor’s master” separately mentioned? The answer is, because disrespect to the king, or to his own master, produces evil in this world; to intimate this, they have been separately mentioned. It may be here remarked, that in some instances even a *Sûdra* is venerable.

YÁJNYAWALCYA:—Science, moral conduct, age, kindred and wealth, entitle men to respect; and most, that which is first mentioned in order: with these qualities, even a *Sûdra* deserves respect in his old age.

With these qualities in an eminent degree, namely science and the rest, even a *Sûdra* is entitled to veneration, when his age passes ninety years. Thus MENU expresses, “even a *Sûdra* is venerable, if he have entered the tenth decade of his age*.”

The *Dîpalicâ*.

Should many venerable persons be assembled, respect must be first shown in society to the learned man; next to him, whose conduct is pure; afterwards, to the aged man; next, to one who has learned kinsmen and the like; and lastly, to the wealthy man. And this concerns priests: valour and the like chiefly entitle a soldier to respect; and riches, a merchant. But here, should many learned men be assembled, the precedence must be regulated by the pre-eminence of their respective sciences; for the *Srî Bhâgavata* records, “That indeed is science, by which the knowledge

* Chap. II, V. cxxxvii.

knowledge of God is advanced." Science, consisting in knowledge, which advances *diligent* obsequiousness, entitles a 'Sūdra to respect; or skill in arts, the science of medicine, or the military art. *From him payment must be procured* by mild remonstrance, tender expostulation, or the interposition of friends and kinsmen. Surely, from a soldier and the rest, *payment must be procured by this mode*. "An evil-minded man;" one who is dishonest, but not unentitled to respect. It is the same in regard to soldiers and the rest, who cannot be treated with disrespect. It is also the same in regard to kindred, pupils, and the like.

"And artists" (CCXLII 2); the particle suggests the comprehension of *Vaiśyas* and the rest. "Dishonest debtors;" averse from the discharge of their debts, not afraid of acting immorally, ignorant and so forth, but not entitled to respect; in a word, *Sūdras* and the rest. Distress must be employed when violent measures cannot be adopted. The term used in the text signifies violent measures.

In defining the mode of recovering debts by suit in court (CCXXXVII), it is said "arrested, dragged *and confined*." How can that be? For, should the ejection of urine and feces, and other corporeal necessities, be prevented, life could not be preserved. For this, CĀTYĀYANA delivers a precept:

CCXLIII.

CĀTYĀYANA:—When a prisoner has need of ejecting urine or feces, he should either be followed *at a distance*, or dismissed in fetters:

2. Should he have given a surety, he must be released each day, at the hour of meals; and at night, if a surety have been given to such effect:
3. But, if he do not tender a surety for appearance, nor avail himself of such a surety, he must be confined in jail, or delivered to the custody of keepers.
4. A venerable, trust-worthy and virtuous man shall not be confined in jail; unrestrained, he must be released,

released, or *be dismissed* under the obligation of an oath.

“When he has need, &c.” when he intimates such occasion, he must be followed, or *watched*, at a distance from the place where urine and feces are ejected. “Or dismissed in fetters;” bound by chains and the like. Two disjunctive particles, here employed, are intended to show distinct rules governed by the nature or amount of the debt, and by the character of the debtor.

What should be done at the hour of meals? The legislator adds, “should he have given a surety,” should a surety have been given, or a sponsor assigned, he must be released each day, at that hour of meals for which the surety became answerable. Consequently, after taking a surety for the hour of meals, he should be daily released. In the *Retnâcara* the terms are expounded, a prisoner from whom a surety is taken. From the expression “each day,” it appears that a surety should be taken each day, that is at the hour of sun-rise. Still, however, the terms “and at night,” authorize the release of a debtor at night also, when a surety has been previously taken: and the word “day” may signify a day and night. A synonymous term, bearing a general sense, occurs in the text concerning hair-interest (XXXV 4). Yet the acceptation may follow the texts of Sages concerning attendance on cattle; for instance, the text cited in the *Prâyâschitta tatwa**.

This must be understood, when he cannot obtain his repast without giving a surety. “And at night;” even at night, if a surety say, “this man shall be produced by me, let him go home at night:” in that case he should also be released at night. But, if no man become surety for him, because he is suspected of dishonesty; or if he do not seek bail; or, having given a surety for appearance, if the debtor, being released, do not again apply to his surety; what should be done in these cases? The legislator says, “if he do not tender a surety for appearance (if he cannot obtain a surety), or do not avail himself of such a surety” (or do not so act as is proper after finding bail); or, having given bail, and

* Cited here at full length, but omitted in its proper place, Book III, Chap. iv. (See note to V. 9 of that chapter.)

and being liberated by the creditor, if he do not again attend his surety, that is, if he conceal himself from him and so forth, (both may be understood from the ambiguous terms of the text;) *in these cases*, should he be at any time discovered after laborious search, he shall be confined in jail; that is, he shall be confined at night within closed gates and the like: but at the hour of meals he must be followed by the creditor himself, or be suffered to take his repast bound in fetters or the like; in the same manner he should be allowed to bathe, but, if possible, he should take his repast within the prison. If there be keepers of the jail, let the creditor imprison him there, after giving notice to the jailers. But when the creditor himself enforces payment of the debt, he may confine him in his own house.

But if the debtor be not liable to confinement in prison, or if he be trust-worthy, the creditor shall not confine him in a jail. This the legislator declares (CCXLIII 4). Should such a venerable person be not trust-worthy, or, though *in general* trust-worthy, if confidence be not placed in him, he must be dismissed under the obligation of an oath. This and other points may be argued.

CHANDÉSWARA and the rest give a similar exposition; but in his gloss it is said, 'if the debtor do not tender, or if he refuse to give, a surety for appearance or other sponsor.' The word 'other' intends a surety for payment. Consequently "surety for appearance" is considered as merely illustrative. The term (translated do not "avail himself") is here explained as signifying "refuse." The disjunctive particle has a reference to the word "tender," which occurs in the text. His refusal may be in this form, "how should I give a surety, I am not trusted?" Such a speech, when he is arrested by the creditor or the king, *is deemed a refusal*. But in fact a surety for payment can hardly be supposed *in the present case*. For instance; should any one say, "release this man, I will pay what is due by him," the creditor may reply, "the term of payment has already elapsed, discharge it therefore immediately:" with this notion, a surety for appearance *only* is mentioned. However, since the term of payment may be enlarged through the interposition of mediators, it is possible that a surety for payment should also be given. The opinion of CHANDÉSWARA may therefore be justified.

The

The confinement of a trust-worthy man is unnecessary, because he can give a surety.

CCXLIV.

VRIHASPATI:—From a debtor who promises payment, the debt may be recovered by mild remonstrance and the like, and by *employing him in work*, by the mode of *moral* duty, by legal deceit, by violent compulsion, and by confinement at home.

“By mild remonstrance and the like;” since the interposition of friends and the rest, and the withholding of a deposit and the like, are comprehended under the term “and the like,” those modes of recovering a debt which are consonant to moral duty and so forth are alone exhibited: the legislator himself details those very modes of recovery, by mild remonstrance and the rest, “by the mode of moral duty, by legal deceit, &c.” “By confinement at home;” by the mode of lawful confinement: for he himself denominates confinement at home, the mode of lawful confinement. “By *employing him in work*;” by labour. On this consideration, CHANDESWARA has not admitted the enunciation of the word “labour” in the definition of violent compulsion. By him four methods only are mentioned. Suit in court falls within the mode of violent compulsion. There is not consequently any contradiction to MENU, who notices five modes. CATYAYANA has not separately mentioned distress or lawful confinement. It falls under the description of compulsory means, *but* is a slighter compulsion, as has been already remarked.

By what means shall payment be obtained from him who has no assets? Wanting funds, what can he pay? Therefore does MENU propound a mode of discharging debts in such cases.

CCXLV.

MENU:—Even by personal labour shall the debtor
pay

pay what is adjudged, if he be of the same class with the creditor, or of a lower; but a debtor of a higher class must pay it *according to his income*, by little and little.

A debtor of equal or inferior class to the creditor should, by labour, put himself on a par with his creditor; the parity consists in mutual exoneration from debt: consequently the sense is, he should discharge the debt. Before the debt was discharged, there was this disparity, that one was creditor, the other debtor; but the debt being discharged by means of labour, on a computation of the hire for work performed, that disparity vanishes. Work must be performed by him alone, the rule of whose class, country, and family, is not thereby infringed, as has been already remarked: but if the creditor be of the commercial class, and the debtor of the military class, the lawgiver declares what should be done: "but a debtor of a higher *or superior* class must pay it by little and little." Here it should be considered, that the debtor of a higher class should be employed in labour consistent with his regular occupation, at some other suitable place, not at the creditor's house; after assigning a sufficient portion of his earnings for the maintenance of his family, the remainder should be delivered to the creditor.

But if the creditor, as well as the debtor, be of the sacerdotal class, may the creditor oblige that debtor to work for him, since he is of equal class? or may he not so employ him?

CCXLVI.

VRĪHASPATI:—If the debtor be really poor, the creditor may take him to his own house, and oblige him to work in distilling spirits and the like; but a priest must be made to pay gradually.

"In distilling spirits and the like;" since the text coincides with that of MENU, a debtor of equal or inferior class is intended. But the subsequent phrase intimates, that a *Brāhmaṇa*, even

even though indebted to a man of the same class, shall not be compelled to work; for if it supposed him indebted to a *Cshatriya* or the rest, the text would be nugatory. The reason is, that *Bráhmanas* are eminent in respect of each other; for their greatness is unlimited.

CCXLVII.

YÁJNYAWALKYA:—He may compel a poor debtor of a low class to do work by way of paying his debt: but a priest, if indigent, must be made to pay gradually according to his income, or casual gains.

“By way of paying his debt;” for the discharge of his debt.
 “According to his income;” according to the acquisition of funds. *The Retnácara.*

But we expound “a low class,” a lower class than the sacerdotal tribe, namely the military class and the rest. “Gradually;” employing a priest in his regular occupation, as sacrificing and collecting alms; or, if that fail, in bearing arms and the like; and out of his earnings, supplying the maintenance of his family with frugality, the remainder should be applied to the discharge of his debt. In proportion as a surplus remains, should the debt be discharged: and this appears from the expression, “a priest must be made to pay gradually.” But here “a low class” is taken as intending also an equal class; and “priest,” as intending a superior class. This is likewise remarked in the *Mitácshará*. The text also concerns a debtor of equal class, as well as of inferior class. CÁTYÁYANA declares it expressly.

CCXLVIII.

CÁTYÁYANA:—The creditor may exact payment by labour from a debtor of the military, commercial, or servile class, if he be either equal to himself or lower.

By

By the enumeration of “military, commercial and servile classes,” it is here intimated, that payment of a debt should be procured from a man of the priestly class by another mode: and that has been already propounded, as declared by VRĪHASPATI and YÁJNYAWALCYA. The term “servile class” intends generally any very low class, and comprehends therefore mixed classes, such as *Múrdhābbhicta* and the rest. The particulars of these classes should be delivered under the title where Tribes are considered.

He should only compel his debtor to perform work which is not reprehended, as has been already hinted: but if he oblige him to perform work which is reprehended, what should follow?

CCXLIX.

CÁTYÁYANA:—But if he compel the debtor to do any improper work, not stipulated at first, he shall be fined in the first amercement, and the debtor shall be released from his demand.

“Not stipulated at first;” not mentioned when the debt was contracted. For instance; if the debtor said, “I will pay thee this debt by any work, even the most abject, if I cannot discharge it by honourable means;” in that case such work has been stipulated: but if he simply say, “I will pay the debt,” or “I will discharge it by labour;” in that case, should the creditor oblige him to perform such work, which has not been stipulated, the creditor shall pay the first amercement, that is, a fine denominated the first amercement. That fine is explained by MENU; “Now two hundred and fifty *panas* are declared to be the first amercement.” This may be properly discussed under the title of Fines.

That sort of labour is reprehended, which is not authorized by the system of law. For example; the regular employment of a *Cshatriya* is the use of arms offensive and defensive; but if that fail, commerce and certain other occupations are authorized by the law: work of a different nature is reprehended. But to a *Cshatriya* who abandons not his own profession, however distressed,

pressed, commerce and the rest, are also abject occupations. Yet to him who has undertaken commerce and the like, or is willing to undertake it, such an occupation is not a blameable employment. However, service and low mechanical arts are abject occupations. The same should be understood in regard to men of the commercial class and the rest: and that is ascertained from practice. This has been sufficiently explained.

It should be here remarked, that a *Bráhmāna*, who subsists even by agriculture, is not considered as following a profession foreign to him: the creditor may not tell him, "following the profession of arms or the like, and *thereby* earning money, pay the debt." Again; daughters, sons, and the rest, should not be sold: *therefore*, from parity of reasoning, no debtor whosoever can be compelled to sell his children, in as much as the act is immoral.

The debtor is exonerated from the debt. The *Retnācara*.

By labour alone a debt is fully discharged; but release from the demand is again mentioned to show that in this case the debtor is exonerated, however inconsiderable the work performed.

CCL.

NÁREDA:—Should a debtor be disabled, by *famine or other* calamity of the time, from paying the whole debt, he shall be only compelled to pay it *in small sums*, from time to time, according to his ability, as he happens to gain property.

Should he be disabled from paying the debt, through some calamity of the time, that is, in consequence of famine or the like.

The *Retnācara*.

Some hold, that this text concerns *Bráhmanas* and debtors superior in class to the creditor; for it coincides with the text of MENU and the rest. But, in fact, this text may also be applicable to any case where the creditor cannot oblige him to work, or where the debtor is incapable of labour.

It should be here understood, that MENU (CCXXXIII) directs payment to be enforced by the king; the subsequent text (CCXXXIV) seems also to intend payment enforced by the

king. The creditor therefore applies to the king, saying, "this debtor does not liquidate my debt;" the king, finding that the debt is to be recovered from a man of the priestly class, adopts the mode of moral duty: calling the debtor's intimate friend or the like, he sends him to obtain payment of the debt from that man by mild expostulation; or procures payment by his own mild remonstrances; or suffers the creditor to beset the house of the debtor, fasting there. But if the debtor be a merchant, he shall only be made to pay the debt according to the custom of the country; the king himself should confine him in the custody of his own officers: this and other modes should be understood. But if the debtor be very contumacious, and one whom the king cannot reduce by reason of his great power, he should bid the creditor procure payment by withholding a deposit or the like. The mode of violent compulsion is obvious. If that be not practised, he should send the creditor to pursue the mode of lawful confinement or distress: this mode has been discussed. Suit in court, or, as explained in the *Médhâtithi*, practice of labour, should be followed for the recovery of a debt from a very indigent debtor. It consists in this: taking a further sum from the creditor, let the king advance it to the debtor, who must labour in husbandry, commerce, or the like, and deliver to the creditor the property thereby gained. This appears from a brief examination of the subject.

In these definitions of the modes of recovery, creditor is mentioned indeterminately; but is described as a person recovering his property, as one who had advanced money, as owner of the effects. It follows, that these methods are universally applicable to deposits and the like. Accordingly, in the chapter on Redemption of Pledges, "deceit" and "confinement" are mentioned in the text of VRĪHASPATI (CII); it thence appears, that the king shall not compel a creditor to restore a pledge to the debtor, by the mode of confinement and the rest: wherefore "debtor," in the definition of lawful confinement, must be understood to signify one who has received property *from another*.

If the creditor do not apply to the king, but himself procure payment of the debt by some legal mode, such as that of moral duty and the rest, shall he be punished or not? On this subject MENU declares *the law*.

CCLI.

MENU:—That creditor who recovers his right from a debtor, must not be rebuked by the king for retaking his own property.

A creditor, pursuing modes of recovery, such as that of moral duty and the rest, in proper cases, shall not be checked by the king: such is the sense. *The Retnâcara.*

“In proper cases;” pursuing the mode of moral duty, if the debtor be of the priestly class and the like; deceit, if he be an heir and so forth. “The creditor shall not be checked;” then surely he shall not be punished. But if he act contrary to law, a punishment shall be inflicted. This appears from the terms used in the *Retnâcara*; and that punishment may be harsh rebuke or other correction: this can only be discussed with propriety under the title of Punishment.

CULLÚCABHATTA expounds “he shall not be rebuked,” he shall not be chidden by the king in these terms: “hast thou dared to recover the debt from thy debtor by violent means without acquainting me?” If there be no reproof, surely there shall be no punishment.

CCLII.

VISHNU:—A creditor recovering the sum lent by any *lawful* means, detention, bondage, or the like, shall not be reproved by the king; if the debtor, so forced to discharge the debt, complain to the king, he shall be fined in an equal sum.

“An equal sum;” a sum equal to the debt recovered.

The Retnâcara.

“Detention;” lawful confinement and suit in court, as described by CĀTYĀYANA. “Bondage;” violent means. The term “or the like,” comprehends the other modes of recovery.

CCLIII.

YÁJNYAWALCYA:—He who recovers an acknowledged debt by his own act, *in any of the legal modes to which the debtor has tacitly consented*, shall not be blamed by the king; and if the debtor shall complain of such an act before the king, he shall be fined, and compelled to pay the debt.

“Acknowledged;” owned. The *Mitácshará*.

A creditor recovering an acknowledged sum, or a debt proved by witnesses or the like, shall not be blamed by the king in these terms, “why didst thou so?” If a debtor, on whom violent means and the like have been used to enforce payment, wickedly complain before the king, he shall be blamed by the king, that is, he shall be fined, and he shall be compelled to pay the debt. This exposition is approved in the *Dípacalícá*. The text already cited from VISHNU, regulates the amount of the fine; he shall therefore be amerced in a sum equal to the debt.

Is not an amercement equal to the amount of the debt inconsistent with the following text of MENU?

CCLIV.

MENU:—The debtor, who complains before the king, that his creditor has recovered the debt by his own legal act, *as before mentioned*, shall be compelled by the king to pay a quarter of the sum *as a fine*, and the creditor shall be left in possession of his own.

It appears from this text, that he shall be fined in a fourth part of the debt. On this CHANDÉSWARA remarks, that ‘an amercement equal to a fourth part of the sum must be understood, when the offender is unable to pay a *larger* fine, or is *in general* virtuous.’

virtuous.' Consequently, a fine equal to the whole sum is considered as the general rule. But CULLÚCABHATTA thus expounds the text: 'should a debtor complain to the king against a creditor who recovered the debt by his own act, thinking that he has great influence over the monarch, that debtor shall be fined in a quarter of the debt, and the sum *recovered* shall be assigned to the creditor.' And that is reasonable; for it was proper that he should recover the debt by application through some person near the king: in this case, since the creditor may also be charged with a slight offence, a smaller fine is imposed on the debtor. Again: if the debtor be *in general* virtuous, or be unable to pay a large fine, the same consequence is reasonable; and the exposition adopted by CHANDÉSWARA may therefore be justified.

Yet some think, that because the institutes of MENU prevail over all other codes, his texts should not be restricted in consequence of a rule of VISHNU. The fine specified by MENU must therefore be considered as the general amercement; and according to that text, and restricting the law propounded by VISHNU, his rule must be applied to the case of a very dishonest debtor. That is wrong; for the law, as propounded by MENU, still needs qualification. The rule of VISHNU, *thus expounded*, signifies, that a very perverse debtor, complaining before the king of his creditor's enforcing payment, shall be fined in a sum equal to the debt; it still contradicts the text of MENU, for that signifies, that a debtor, complaining before the king, shall be fined in a quarter of the debt: to reconcile the apparent inconsistency with the rule of Vishnu, "not dishonest" must be given as an epithet to "debtor" in the text of MENU; and the law, propounded by MENU, has needed qualification. This must be admitted by the wise.

But if the debtor be unable to pay the sum by any means whatsoever, wheel-interest may be exacted at the choice of the creditor.

CCLV.

VRĪHASPATI:—After the time for payment has past, and when the interest ceases, *on becoming equal to the principal*, the creditor may either recover his
A A 3
debt,

debt, or require a new writing in the form of wheel-interest (*chacravṛiddhi*).

“When interest ceases,” after accumulating to its limit.

The *Retnācara*.

“After the time for payment has past ;” this may be considered as relating to a loan for a specified time. “When interest ceases,” concerns a debt unlimited as to time. Hence it appears, that if a creditor, by violent methods or the like, exact payment of a sum lent for a limited time before its term has expired, or of a debt for no limited time before interest ceases, he shall be punished. But if he can recover it by mild expostulation, no offence shall be imputed to the creditor, as suggested by another text of VRĪHASPATI (CLXVI 2).

“Or require a new writing,” (that is, a written contract,) in the form of wheel-interest. Making the doubled sum the principal, and stipulating interest afresh, he may require a new writing, after cancelling the former note.

CCLVI.

CĀTYĀYANA :—Twice the sum lent should always be received by the creditor, *if the debt be of long standing* ; but if *the debtor do not pay* twice the principal when interest has ceased, the creditor may again exact *an agreement for interest*.

“Twice the sum” is here mentioned on the supposition of a debt consisting of gold or the like ; but if clothes or other commodities were lent, four times the value, or other multiple of it, as declared by the law, must be understood. Accordingly VRĪHASPATI says generally, “when interest ceases.”

“When interest has ceased” (CCLVI) ; when interest has stopped ; if he do not then pay : the text must be so supplied. In that case “the creditor may again exact interest ;” making the former debt, together with interest, his present principal, he may stipulate interest afresh ; and this is the wheel-interest mentioned

tioned by VRIHASPATI. Such wheel-interest is of three kinds, as declared by MENU.

CCLVII.

MENU :—He who cannot pay the debt *at the fixed time*, and wishes to renew the contract, may renew it in writing, *with the creditor's assent*, if he pay *all* the interest then due ;

2. But if, by some *unavoidable accident*, he cannot pay the whole interest, he may insert *as principal* in the renewed contract so much of the interest accrued as he ought to pay.

“ Then due ;” the interest legally due to the creditor : paying the whole or a part of that, he may renew the contract or writing ; that is, tearing the former writing, he may execute a new bond. If the whole interest be paid, fresh interest on the original debt only is stipulated : this is one form of wheel-interest ; and in this case the expression “ he who cannot pay the debt ” signifies one who is only unable to pay the principal. If a part of the interest be paid, interest may be stipulated afresh on the principal of the debt, together with part of the interest accrued : this is another form of wheel-interest ; and in this case the expression quoted, signifies one who is unable to pay the original debt, and a part of the interest. But if he do not pay “ the interest then due,” (for the phrase is connected with the preceding terms,) that is, if he pay no part of the interest, he must renew the debt for the sum then due as a new principal : *in other words*, he must acknowledge it a fresh debt, that is, admit the interest as a debt ; and acknowledging it a new debt, it follows of course that interest shall again accrue. Or connecting the phrase with preceding terms, the construction may be thus : ‘ if he do not pay the amount of interest, he must renew the contract :’ consequently, he must renew the written contract, inserting as a new principal the original debt with interest. In this case the expression quoted signifies one who is unable to pay the original debt and the whole of the interest ; or that may be the sense in all these cases.

“ So much of the interest accrued as he ought to pay :” this is purposely mentioned to remove the doubt how he should pay the interest ; whether he may pay any part which is forthcoming, or must pay the whole interest at once. In the preceding text, “ if he pay the interest then due,” it is supposed that he pays the whole interest ; for no distinction is expressed. Consequently, two cases only are fully declared : and by the last phrase, explained “ so much of the interest as may happen to be due,” it is intimated, that after paying some part of the interest, he should renew the contract, inserting as principal the original debt with *the remaining* part of the interest. Such is the notion entertained by CULLÚCABHATTA. Three cases therefore arise even on this exposition.

When a debtor renews a contract after paying the whole interest *then due*, how can it be wheel-interest, since it does not correspond with the texts of VRĪHASPATI and YÁJNYAWALCYA, describing that as interest upon interest ; for in this case there is no interest upon interest ? It is answered, the word (*vriddhēh*) is in the fifth, not the sixth, case : consequently, after stipulated or legal interest, *further* interest, which was not promised when the debt was originally contracted, is wheel-interest, or *interest after interest* ; there is no difficulty. Such is the interpretation approved by CHANDÉSWARA ; for he says, ‘ the debtor may renew the contract with interest on the principal, together with some part of the interest accrued, or on the principal alone.’

Some explain the first text, “ if he pay some part of the interest then due.” Consequently, if some part of it be paid, or the whole be unpaid, wheel-interest may be stipulated. Two forms of it are therefore mentioned by MĒNU ; not three, for a third is not specified. But when the whole interest has been paid, if the bond be then renewed, there is no wheel-interest, but a fresh debt by the voluntary act of the debtor. In that case interest is therefore legal in a moral view : but interest upon interest is immoral. Or that also may be deemed immoral, under the text of VRĪHASPATI (XXXV 7).

But rigid interpreters thus expound the text : he who cannot pay the whole debt, principal and interest, being unable to effect its full discharge, but able to pay some part of the interest, or the whole interest, (that is, unable to pay a certain portion of the debt,)

debt,) must renew the contract in writing: he must stipulate interest afresh, else the renewal of the contract would be useless: and this has been expressly declared by CĀTYĀYANA. How can that be, since there is not a new loan? Therefore does MENU declare, "he may insert *as principal* in the renewed contract the sum then due." That being the case, must a writing be executed which contains a fallacy? For this cause does the legislator add, "if he cannot pay; *literally, not producing the sum:*" therefore, mentally paying the sum due, let him borrow it again. If some assets be forthcoming, may, or may not, a part of the interest be paid therewith? On this point the Sage adds, "he has a right to pay as much of the interest as is possible*."

CCLVIII.

MENU:—A lender at interest on *the risk of safe carriage* (*chacravṛiddhi*), who has agreed on the place and time, shall not receive such interest, if *by accident* the goods are not carried to the place, or within the time.

"Who has agreed on the place and time," is thus expounded on the authority of CHANDÉSWARA: the debtor says, "I will pay the debt at such a place, and at such a time;" and the creditor assents to that proposal. Such a creditor is a lender at wheel-interest, having bargained for interest of that description. If he pass that place and time; if he do not go to that place at that time, the creditor shall not receive such interest, namely wheel-interest: of course he must receive back the sum lent without interest. Hence, even should interest prescribed by the law be stipulated for a certain time and place, it shall not be received by the creditor if he do not attend at that place and time: for that small omission annuls legal interest.

But CULLÚCABHATTA expounds the text otherwise: the term "wheel" denotes the use of a wheel-carriage or the like. A lender who has accepted that by way of interest, and has agreed on

* According to the literal sense of the text: but it has been otherwise translated on the authority of commentators.

on the place and time; for instance, *he has agreed, that* “a journey to *Vārāṇasī*, or the use of the carriage for a year, shall be the only interest:” in such a case, if the debtor fail in time and place, if he do not carry *goods* to *Vārāṇasī*, or do not carry *goods* during the year, he shall not receive the benefit, that is, the whole hire of the carriage. Consequently, the whole interest is undischarged*.

CCLIX.

VRĪHASPATI:—As the original debt, together with *the arrear of* interest, becomes a *new* principal, when wheel-interest is received after the debt is doubled, so does the use of a pledge *forborne* become a *new* principal in a similar case.

When wheel-interest is received after the debt is doubled, as in that case the original debt with interest becomes a new principal, so does the use of a pledge also become a new principal in a certain case; that is, even the use and profit of a pledge bear interest. For example; a man borrows money, pledging a cow, on these terms: “this cow shall be milked by you so long as I do not discharge the debt;” or, “this cow shall be milked by you during fifty months;” or, “she shall be milked to make good the interest of the debt.” In this case, should the cow accidentally die notwithstanding the utmost care, or be stolen by thieves or the like; then, if the debtor do not give a fresh pledge, the value of usufruct and the principal sum must be paid at the time of discharging the debt. But, if the debtor cannot do so, then, being sued before the king or before a publick assembly, or attending the creditor of his own accord, he executes a new writing in the form of wheel-interest. In that case he may execute a bond after paying the value of usufruct; should even that exceed his means, he may add the principal sum to that value, and, inserting as principal the accumulated sum, execute a new deed, in which stipulated interest and the like, or legal interest at

* The translation, which I quote unaltered, varies from both comments (MENU; Chap. viii. V. 156.)

at the rate of an eightieth part and so forth, may be established by consent of both parties; and he may cancel the former note.

Here an observation should be made. When a debt was contracted on these terms, "let this cow be milked until the debt be discharged," but, *afterwards*, the cow being accidentally lost, wheel-interest is stipulated by the debtor, whom the creditor has arrested, it must not be said, that, *in such a case*, the value of the use *lost* before the renewal of the contract should be inserted therein, and the interest subsequent to it must follow the rate of profit from the use *of the cow*. On the contrary, any other rate which may be settled, such as an eightieth part or the like, shall regulate the interest; for, in fact, it becomes a new debt.

CCLX.

VRĪHASPATI:—This rule concerns an acknowledged debt; but he who contests the demand, shall be compelled to pay, on proof in court by written evidence or oral testimony.

This rule, already propounded, *for* the recovery of a debt by expostulation and other modes, concerns an acknowledged debt, or one which is ascertained to be due. But, if the debtor contest the demand; if he deny the debt, saying, "I owe not the sum," he shall be compelled to pay it, when the debt has been proved by written evidence or the like; he shall not be forced to pay it on the simple affirmation of the creditor. "Or by oral testimony;" the particle is indeterminate, comprehending *verbal* contract and the like. For example; the creditor at some *former* time demanded payment of the debt from his debtor; he replied, "I will pay it at the end of a month;" if any honest man know this fact, the debt may be thereby proved. So long as it be unproved, the creditor shall not use the means of recovery. If he do, VRĪHASPATI ordains a fine.

CCLXI.

VRĪHASPATI:—When the debtor appeals to judicature,

ture, or when the demand is unliquidated, he shall never be constrained by the mere act of the creditor; and he who constrains a debtor thus exempted from such constraint, shall be fined according to law.

If the demand be, for any reason, unliquidated or dubious, the debtor, who appeals to judicature, shall not be compelled or forced to pay. He who constrains a debtor thus exempted from constraint or compulsion, shall be fined: and the fine thus ordained must be understood in the case where the creditor enforces payment by his own act, or through the king's officers. But, when that is done by the king, expiation must be performed, for none has mentioned a fine on *the king* himself.

Who is considered as a debtor appealing to judicature? The same legislator replies to that question:

CCLXII.

VRIHASPATI:—A debtor is considered as appealing to judicature, when he says, “I will pay whatever shall by law be declared to be due.”

“When he says;” a debtor, who says, &c. A debtor appealing to judicature (*criyāvādī*) pleads or claims (*vadati*) actual proof of a fact (*criyā*); such as legal evidence and so forth.

The same lawgiver explains a demand unliquidated:

CCLXIII.

VRIHASPATI:—The demand is considered as unliquidated, when a dispute arises between the two parties on the species lent, or its number, weight, or measure, *on the value of a pledge* or the like, on the amount of interest, or on *the question* whether the sum be, or be not due.

“On

“On the species lent;” on the nature of the property lent, whether it be gold, silver, or other species. For instance; it is ascertained, that the debt bears interest at the rate of an eightieth part or the like; and it is also admitted by the debtor, that he contracted the debt in such a month and year; but it is questioned whether the species lent were gold or silver. So, “on its number, weight, or measure,” it is questioned whether a hundred pieces, or eighty, were borrowed. Under the term “and the like” is comprehended slavery and so forth. The *Retnâcara*.

The meaning is, when a slave has been pledged, it is questioned whether his service were assigned for one or two months. Under the term “and the like” are comprehended the questions, whether a pledge were assigned, or a surety given. “On the amount of interest;” the doubt is, whether the loan bear interest or not, or whether the rate be an eightieth part of the principal. “On the question, whether the sum be, or be not, due;” for instance, the debtor questions whether he received the loan or not; whether he repaid it or not; in other words, whether it be due from him or not; the verb (*dā*, give,) here signifies payment. When a dispute or disagreement arises between the two parties, namely, between the claimant and respondent, that debt, concerning which it arises, is a demand unliquidated. The questions above mentioned are intended by the term dispute. Accordingly MENU (CCXXXIII) directs, that the king shall enforce payment of a debt proved by evidence to be justly demandable from the debtor. That text has been already expounded.

But when a debtor denies a just debt, MENU declares that the king shall enforce payment to the creditor of what is proved by evidence, and exact a fine from the debtor.

CCLXIV.

MENU:—In a suit for a debt which the defendant denies, let him (*the king*) award payment to the creditor of what, by good evidence, he shall prove due, and exact a small fine, *according to the circumstances of the debtor*.

“Which

“ Which the defendant denies ;” which he disowns.

The *Retnācara*.

In a suit for a debt which the debtor denies, affirming that he owes him nothing. CULLÚCABHATTA.

Consequently the debtor, who affirms that he owes nothing, the king shall compel to pay to the creditor what shall be proved due by oral testimony and so forth.

The king shall exact a small fine, because the defendant denied a just debt. The *Retnācara*.

CULLÚCABHATTA states, ‘ according to the circumstances of the debtor.’ For instance : in a case of denial, the king shall exact, according to the circumstances of the man, a less fine than the full amercement of twice the amount of the debt, which will be mentioned.

VRĪHASPATI has directed a fine on the creditor who enforces payment of a debt not proved by evidence, ordaining, that “ he who constrains a debtor exempted from such constraint, shall be fined according to law.” What sort of fine should be imposed? MENU replies to that question :

CCLXV.

MENU :—In the double of that sum which the defendant falsely denies, or on which the complainant falsely declares, shall those two men, wilfully offending against justice, be fined by the king.

The defendant who denies the debt offending intentionally, or the claimant who prefers a false claim for so much money, shall be fined in twice the amount contested ; because these two men, the debtor and creditor, offend against justice.

The *Retnācara*.

A question here occurs for discussion : the expression used by VRĪHASPATI, “ he who constrains, &c.” signifies one who takes measures adapted to the recovery of the sum. The same is here signified by the expression, “ that sum on which the complainant falsely declares ;” for a false claim, in these words, “ pay my debt, which is due from thee,” is a measure adapted

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to the recovery of the sum. Now, if a man only declares falsely on the sum, and does not proceed to the actual recovery of it, he shall be fined in double that sum; but if he proceed to the utmost length, the amercement is no greater: which is a disparity in the law. If this be alleged, the answer is, that the derivation of the term “who constrains” suggests one who takes measures adapted to the recovery of debts; it does not necessarily signify the utmost process. Hence VRĪHASPATI and MENU concur: and whether or not a greater fine should be exacted, if the false demand be enforced, may be discussed under the title of Fines. But here another fine (that is, a fine on the debtor,) is incidentally propounded by MENU.

This text, ordaining a fine equal to double the amount contested, must be understood of the case where the debt is denied, knowing it to be just, or claimed, knowing it to be false. Such is the opinion of CULLÚCABHATTA.

CCLXVI.

YÁJNYAWALCYA:—Should a debt, *which was* denied, be proved by evidence, the defendant must pay the sum, and an equal fine to the king; and he who prefers a false claim must pay twice the sum which he demanded.

“Denied;” disowned: if the debtor affirm, “I owe it not.” Should that debt be proved or established by the evidence of witnesses or the like, he must pay a fine to the king equal to the debt contested: but if a false claim be preferred, the claimant must pay a fine to the king equal to twice the sum for which he sued.

This text of YÁJNYAWALCYA, prescribing a fine on the debtor equal to the amount of the debt, must be adduced when there is no intentional offence. There is not any inconsistency.

The *Retnâcara*.

Consequently there is in fact no variance between CULLÚCABHATTA and the *Retnâcara*; for the intentional offence can only be the conscious affirmation of a falsehood.

Some hold, that since the person who shall receive the sum
is

is not mentioned in the text of MENU (literally translated, "those two men, wilfully offending against justice, shall be forced to pay a fine *equal to double that sum*"), the meaning of the precept, that the debtor shall be forced to pay twice the sum, is, that he shall pay the sum in question to the creditor, and a fine of the same amount to the king. Consequently, a fine on the debtor, equal to twice the sum contested, is not ordained; the creditor alone shall pay a fine equal to double the sum contested, if he prefer a false claim. And this also coincides with the text of YÁJNYAWALCYA; for both direct, that in whatever case a fine equal to the debt shall be paid by the debtor, in a similar case twice the sum must be paid by the creditor.

That cannot be; for it is unreasonable to impose a double fine for an equal offence.

CCLXVII.

CÁTYÁYANA:—Any creditor who harasses a debtor appealing to judicature, shall forfeit that claim, and pay an equal fine.

It should not be argued, from the coincidence of this text of CÁTYÁYANA, cited in the *Mitácshará*, that a fine equal to double the sum intends the forfeiture of the sum claimed, and an equal fine. Were it so, the fine would not be double, since one of the constituent parts of *that multiple* would have no existence. The last hemistich in the text of YÁJNYAWALCYA must be understood as relating to the conscious exhibition of a false claim. Accordingly,

CCLXVIII.

YAMA declares:—If a rich debtor, through dishonest perverseness, pay not his debt, the king shall compel him to discharge it, and may take from him twice the sum *as a fine*.

Therefore, exacting from the debtor twice the amount of the
 2 debt,

debt as a fine, the king shall compel him to pay it, namely the debt ; for that must be supplied. But if he begin by denying the debt, though conscious of owing it, and afterwards, being brought into court, acknowledge the debt before the writing or other evidence be produced, he shall only be fined in a sum equal to the debt ; for half the fine in question is ordained when *the defendant* himself acknowledges the debt.

CCLXIX.

VYÁSA :—After denying the claim, should the party himself acknowledge the due, it is considered as a *tardy* acknowledgement, and the fine ordained is half of that *which is imposed in the case of obstinate denial*.

Of that fine which is imposed in the case of obstinate denial. By parity of reasoning, should he acknowledge it in court upon reflection, though previously unconscious of the debt, the fine shall be half the debt in question.

This text of YÁJNYAWALCYA, though not inserted in most copies under the title of Loans, is inserted in this place, because it has been quoted by CHANDÉSWARA, and corresponds with texts of MENU and others.

CCLXX.

VYÁSA :—The claimant shall pay twice the sum for which he preferred a false claim :

2. The rule shall be the same in respect of either party who may be confuted, if a consideration be *specially* pleaded ; and likewise in respect of either party who may be cast, should a former decision be alleged.

“ A consideration ;” a special cause.

The *Retnácara*.

The following text explains a special cause :

CCLXXI.

NÁREDA:—When the defendant acknowledges the receipt of the sum, as declared by the plaintiff, but alleges a consideration, it is deemed a special plea (*pratyavascanda*).

The defendant, or debtor, acknowledges the receipt of the sum, but answers, “it is true I received the money, but it was given by thee as a gratification for the accomplishment of thine own business.” In this case also the rule is the same; either party being cast, whether he be claimant or defendant, shall be fined in twice the amount. For instance: at the close of the suit, if the gift of the sum as a gratification be proved, the claimant shall be fined in twice the amount; if the debt be proved, the debtor shall be fined in the same amercement. CÁTYÁYANA has explained the plea of prior decision:

CCLXXII.

CÁTYÁYANA:—If a man, though cast at law, revive the suit, he should be considered as one previously confuted, and is called an appellant from a former decision (*pránnnyáya*).

For instance: a creditor cast in a suit formerly instituted before one umpire, again declares before another judge, “this man is my debtor.” That claimant should be answered by the defendant with this plea; “he has been already cast by me:” and that plaintiff is called an appellant from decision, or one whose suit has been already decided. In that case, whoever is cast shall be fined; whether the claimant be cast or the defendant, in consequence of the former decision appearing to be unjust, or on other grounds. “Likewise;” that is, he shall be fined in double the sum.

CCLXXIII.

MENU :—A debt being admitted by the defendant, he must pay five in the hundred *as a fine to the king*; but if it be denied, *and proved*, twice as much: this law was enacted by MENU.

This text is expounded by CULLÚCABHATTA, CHANDÉS-WARA, and others, as relating to fines. Consequently, a debt being first disowned, but afterwards voluntarily admitted by the debtor, on his being merely brought into court, he must pay an amercement of five in the hundred, or a twentieth part of the debt. But if it be denied, and the debtor persist in disowning it even in court, and it be proved with much trouble by a writing or by the evidence of witnesses or the like, *he must pay* twice as much, or ten in the hundred. CULLÚCABHATTA concurs in this exposition.

On the subject of the first hemistich, NÁREDA propounds a law :

CCLXXIV.

NÁREDA :—But if a rich debtor, through dishonest perverseness, pay not his debt, the king may take only a twentieth part of the sum, *if circumstances be very favourable to the debtor, or if he acknowledge the debt in court*.

That sum which a rich debtor withholds through dishonest perverseness, the king shall compel him to pay to his creditor, and may himself take as a fine a sum amounting to a twentieth part of the debt: and this must be understood when the debtor voluntarily confesses the debt in court; for it corresponds with the text of MENU ordaining five in the hundred.

And this alternative in respect of moderate fines should be regulated by the qualities of the debtor, his class, and his circumstances.

The *Retnâcara*.

On the subject of the last hemistich, YÁJNYAWALCYA propounds a rule:

CCLXXV.

YÁJNYAWALCYA :—A debtor shall be forced to pay to the king ten in the hundred of the sum proved against him ; and the creditor, having received the sum due, must pay five in the hundred *towards defraying the charges of judicature.*

The sum being proved, the debtor shall be forced to pay ten in the hundred as a fine to the king, making good that amercement out of his own funds. The very same gloss is delivered in the *Dīpacalīcā* ; and this must be acknowledged as the opinion entertained by the author of the *Mitācśharā*. It concerns the denial of a debt ; for it coincides with the text of MENU, “ if it be denied, twice as much ” (CCLXXIII).

The last part of the text of YÁJNYAWALCYA conveys this sense ; the creditor also, having recovered his debt awarded by the king, must pay five in the hundred or a twentieth part to him as wages, *or towards defraying the charges of judicature.*

A man, subject to amercement under these texts, shall be forced to pay double the debt, a sum equal to the debt, or ten in the hundred, the fine being mitigated according to the degree of virtue he possesses, or other circumstances taken into consideration. This is declared. But if the debtor, coming into court, confesses the debt, he shall only be forced to pay half as much. This is also declared. Consequently a priest, a virtuous soldier or the like, and a very indigent debtor, must pay five in the hundred ; but if he persist in his denial even in court, ten in the hundred ; for this conduct is supposed to be preceded by knowledge of the fact : but if he were unconscious, half as much. In general, a rich soldier and the like shall be fined in a sum equal to the debt, or in half that amercement, according to circumstances as above-mentioned, if he deny the debt through ignorance ; but twice as much if he were conscious of owing the sum.

On this subject CHANDÉSWARA has said in his gloss on the last hemistich of the text (CCLXXIII), ‘ he shall be fined in
twice

twice as much as is the amount of the debt.' That is liable to objection ; for it would be a vain repetition of the double sum mentioned in another text of MENU (CCLXV).

In like manner should the various fines on the creditor, in the case of a false claim, be regulated according to class and so forth. NÁREDA mentions a distinction in respect of the servile class :

CCLXXVI.

NÁREDA :—Should the sons of twice-born men, by women of the servile class, advance false claims, let the king cause their tongues to be drawn *forth* and pierced with a sharp instrument.

As for the following opinion, we think, it appears inadmissible, because it is unauthorized by CHANDÉSWARA, VÁCHESPATI, SÚLAPÁNI, CULLÚCABHATTA, and BHAVADÉVA.

The phrase in the text of YÁJNYAWALCYA (CCLXXV), which is explained " shall be forced to pay by the king," being adduced in reply to the question arising on the preceding text (CCLXXVIII)*, ' by whom shall he be forced to pay his debts in the order in which they were contracted ? ' there is in fact a *necessary* repetition. Or the first text (CCLXXVIII) relates to the case of two or more creditors, but this text (CCLXXV) supposes the case of a single creditor. Hence the creditor, having received the sum due, must pay five or ten in the hundred, since it is a rule, that ' an alternative is admitted in law, if a question can be proposed, *which is thereby satisfied* ; ' he must pay either five or ten in the hundred : such is the alternative, and that is settled in practice. For instance ; if the creditor must pay five in the hundred when the debt is confessed to be due, *then*, should the debtor confess it in court, but, through dishonest perverseness, pay it not, the king, enforcing payment, shall take from the creditor, towards defraying the charges of judicature, five in the hundred, that is a twentieth part of the debt, as directed by MENU, YÁJNYAWALCYA, and NÁREDA, concurring in the same precept

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(CCLXXIII,

* In the code of YÁJNYAWALCYA, the verse CCLXXVIII immediately precedes the verse CCLXXV. (See YÁJNYAWALCYA, ch. ii. v. 41 and 42.)

(CCLXXIII, CCLXXV, and CCLXXIV). If the debt be denied, and the defendant plead in the king's court, "I owe nothing," the king may exact twice as much or ten in the hundred, that is a tenth part, as authorized by MENU and YÁJNYAWALCYA (CCLXXIII and CCLXXV): and the expression in the text of YÁJNYAWALCYA, "of the sum proved or recovered," is properly put in the fifth case: and the terms, "through dishonest perverseness," in the text of NÁREDA, are also pertinent; for, on any other construction, there could be no fine of a twentieth part imposed on the debtor; and it would be improper to exact *no greater fine than* a twentieth part, since he is stated as acting wilfully, through dishonest perverseness. What then is the import of the following rule of VISHNU; for he mentions, as a fine, the tenth part *to be paid* to the king?

CCLXXVII.

VISHNU:—If a creditor sue before the king, and fully prove his demand, the debtor shall pay, as a fine to the king, a tenth part of the sum proved; and the plaintiff, having received the sum due, shall pay a twentieth part of it *towards defraying the charges of judicature.*

This can be no objection; for CHANDÉSWARA describes, as a secondary fine, the sum which must be paid by the creditor: 'although the creditor be void of offence, the king may exact, as a fine, a twentieth part of the sum for enforcing payment of it.' Consequently the debtor must pay the sum in the presence of the king, and discharge the debt due to his creditor; and the creditor, having received his due, must pay, as a fine, the tenth or twentieth part of the sum: such is the construction *according to this opinion* *. But we hold it proper to reject this interpretation, for the reason above mentioned.

Others

* To understand the comment, it may be requisite to state the texts as they would be translated were this interpretation received.

CCLXXIII.

Others quote the *Dīpacalīcā*, that ‘the various fines should be regulated by other texts of law, according to the existence or non-existence of an unmitigated offence.’ From a creditor of the priestly class, five or ten in the hundred cannot be taken without offence; for it is declared by MISRA, that the property of a priest should on no account be taken by the king; and it is forbidden in the *Mahābhārata*, when treating of the duties of kings, and on other occasions, to take wealth from *Brāhmanas*. But punishment may be inflicted on *Brāhmanas*; for the punishment of *mutilation*, such as cutting off the hand, is mentioned in the dialogue between SANC’HA and LIC’HITA contained in the *Mahābhārata*; and the jewel which he wore on his head, was taken from AŚWAT’HĀMAN: accordingly the gem yielded by AŚWAT’HĀMAN, is mentioned in the first book of the *Mahābhārata*.

The *Srī Bhāgavata*:—*Ignominious* tonsure, confiscation of effects, and banishment from the realm, are the punishments of reputed priests*; no other corporal punishment, or *pecuniary penalty*, is allowed.

“Tonsure;” shaving the hair. “Confiscation of effects;” seizure of property. “Banishment from the realm;” expulsion from the country. This has been sufficiently explained; and it has been *here* mentioned merely for the sake of illustration.

In a matter of debt, or the like, the demand should be proved by the evidence of witnesses and so forth; but if that be impracticable,

B B 4

CCLXXIII.

A debt being admitted by the defendant, he (the plaintiff) must pay five in the hundred; but if it be denied, twice as much.

CCLXXIV.

But if a rich debtor, through dishonest perverseness, pay not his debt, the king may take only a twentieth part of the sum *from the creditor*.

CCLXXV.

A debtor shall be forced to pay by the king: and out of the sum proved and recovered, the creditor, who receives his due, must pay ten or five in the hundred, *according to circumstances*.

* Literally, kinsmen of BRAHMA’; by which must be understood priests by birth, yet not strictly observing the duties of their class.

licable, by ordeal : if popular proof can be obtained, there shall be no recourse to ordeal. This will be elucidated under the title of Administration of Justice.

Should there be many creditors of the same debtor, to whom shall his due be first paid, to whom last?

CCLXXVIII.

YÁJNYAWALCYA :—A debtor shall be forced to pay his creditors in the order in which the debts were contracted, after first discharging those of a priest or of the king.

On the competition of several creditors, a *Bráhma*na, a *Cshatriya*, and so forth, the debt of the *Bráhma*na shall be first paid ; and afterwards the rest in their order, as they were contracted : that is, the sum which was first lent shall be first paid, that which was next lent shall be next discharged : such is the sense of the text. The debts shall not be liquidated by a distribution of proportionate shares of the debtor's assets ; nor shall the priority or subsequence of the debt due to the *Bráhma*na be examined : for the law does not direct it. But, should there be several creditors of the priestly class, the order in which the debts were contracted must be admitted.

On the competition of a *Cshatriya* and a *Vaisya*, the debt of the *Cshatriya* shall be first paid, and next that of the *Vaisya* ; for YÁJNYAWALCYA says, “ after discharging those of the king*.” Again ; on a similar competition of a *Vaisya* and a *Súdra*, the debt of the *Vaisya* shall be first discharged, and next that of the *Súdra*. In like manner, should a triple succession be admitted in regard to creditors of mixed classes, ranking in three degrees, highest, middlemost, and lowest : and should a creditor of the servile tribe claim with one of a mixed class, the same should be understood according to circumstances of *relative precedence*.

On this subject CHANDÉSWARA says, ‘ should there be at once creditors of various classes, the priest shall be first paid, and next the soldier and the rest ; but if the creditors be of the same class,

* Which may be understood generally of the military class.

class, the debts must be paid in the order in which they were contracted.' By saying, 'if they be of the same class,' it is evidently meant that the order of the classes should be taken, if many debts be due to men of different classes. The same meaning is expressed in the gloss of the *Mitâcsharâ*: 'if the creditors be of equal class, 'the debtor shall be compelled by the king to pay the debts in 'the same order in which they were contracted; but if there be 'variance of class, in the order of *the classes*, sacerdotal and the 'rest.' For "the order in which the debts were contracted," is there applied to the case of equal class; and the order of classes, sacerdotal and the rest, is there prescribed in the case of unequal class. There is no difficulty in supposing the same meaning in the gloss of the *Dîpacalîcâ*: 'should there be more creditors than 'one, the debtor shall be forced to pay the debts in the order in 'which they were contracted; but if there be at once creditors of 'the priestly and military class, and so forth, he shall be forced 'to pay the sums due to the *Cshatriya* and the rest, after first dis- 'charging the debt of the *Brâhmana*, even though last contracted.'

CCLXXIX.

CÁTYÁYANA:—If there be many debts at once, that which was first contracted shall first be paid, after those of a king or of a priest learned in the *Vêda**.

"Of a priest learned in the *Vêda*;" after the death of a *Brâhmana*. "Of a king;" of a *Cshatriya*. This text is also intended to show a case of preferable payment in the order of the classes. It must therefore be understood in the same sense as above mentioned.

CCLXXX.

CÁTYÁYANA:—If all the contracts were written in one

* "But when the effects are few, the creditors numerous, and the debtor is sold into slavery, all shall receive *their shares* of the price, in proportion to their just demands, because there are not assets." I cite this passage from the *Vivâda Chandra*, because it contains a rule affirmed by the *Mait'hila* school, and extended to the case where the debtor's effects only are sold.

one day, the debts, payment, subsisting demand, and interest, shall be equal; otherwise, in order of time.

From the expression “in one day” it appears that no account should be taken of the priority and subsequence of several debts contracted on the same day; else the text would be nearly unmeaning. Consequently, the construction of the phrase is this: if the contracts were written in one day, that is, if debts contracted with many persons were reduced to writing in one day, payment, subsisting demand, and interest, shall be equal in respect of those debts. Therefore, collecting all the assets of the debtor, which are forthcoming, the creditors should divide them in shares proportionate to the amount of their respective debts. A distribution of shares proportionate to the amount of the debts may be thus exemplified: ten *suvernas* are due to one, two to another, and four to a third, but the assets of the debtor amount to eight *suvernas* only; in this case half a *suverna* shall be received for each *suverna*; and he to whom ten *suvernas* are due, shall receive five *suvernas*; he to whom four *suvernas* are due, two *suvernas*; and he to whom two *suvernas* are due, one *suverna*. But it must be understood, that in this case the principal and interest are added together. Hence, if one have a claim for interest specially stipulated, or the like, and the other for legal interest only, the interest being unequal, the payment to each shall be regulated by the interest receivable by him. But if some part of the interest have been received by any one creditor, that shall not be required from him, but it shall be deducted from his debt. However, in the case of interest by enjoyment, the principal only shall be admitted in the account. For instance: the principal sum amounts with interest to ten *suvernas*, and two *suvernas* have been received on a former day; the remaining eight *suvernas* only shall be admitted on a subsequent day, when a dividend is made: the two *suvernas* received on a former day shall not be confounded with the debtor’s assets, for that debtor has no title to money actually received by the creditor. But afterwards he shall not have enjoyment of the whole *pledge*, for the debt is lessened in comparison with the former due. Nor shall the creditors divide that *pledge*, since it is possessed by one creditor alone.

alone. In fact, the creditor, who has received a pledge to be used, shall not receive a share of the dividend; for he has trusted to the chattel possessed by him for [the recovery of his debt. He also who has a pledge for custody in his power, such as a copper caldron or the like, shall have no share of the dividend; but he may demand the sale of the pledge. Yet, if the debtor or any other person say, "this man has in his possession a chattel belonging to the debtor, let it be sold and shared by all the creditors," that shall not be done; for the debtor cannot sell a chattel possessed by the creditor, and the debtor's title *to the pledge* is at that time limited. It is the same also in other cases. In short, ascertaining and writing down the debts of all *the creditors*, with the interest due on them, a distribution of the debtor's assets should be made.

All this should only be done when the term has elapsed. Hence, if debts be contracted with several persons in one day, and the term of one loan be two years; of another, four years of a third, five years: in this case, should a distribution be made at the close of the fourth year, no dividend shall be received by him who claims under a contract for the term of five years; for his claim is weaker, since the term is unexpired. If he be so fortunate as that the debtor should survive and acquire wealth, then shall that debt be discharged. Should a further distribution of assets be made after the expiration of the fifth year, he shall receive an equal dividend in proportion to the debts then due: the whole assets, or a larger share, shall not be received by the creditor, who received no dividend at the former distribution; for no law ordains it. This and other points may be argued.

But if the debts of all the creditors be not fully discharged, they may preserve their claim for the remainder. This also must assuredly be proportionate to the *original* debts, *since the dividend was so*. Therefore the legislator adds, "subsisting demand," or literally preservation; the term is synonymous with the owing of the debtor*.

If the debtor's assets only suffice for the discharge of interest due to all the creditors, or to any one of them, then interest only shall

* This exposition appears unsatisfactory; *racshan'a* is synonymous with *d'háran'a* in some senses, not in all. Sir W. JONES translated it "profits of a pledge or the like." Nevertheless, I follow the gloss.

shall be received, but the principal shall bear no further interest. However, when, in consequence of a term having been stipulated, a distribution of assets is made before the period which would regularly double the debt, it may bear further interest after the dividend. Therefore the Sage adds "and interest." It is *also* the practice, for a creditor not to accept *payment of* his principal while interest remains due. It follows, that, if debts have been contracted with two or more creditors on one day, a preference being then disallowed, if the debtor cannot fully discharge all the debts, whatever assets are found, shall be taken by all the creditors, and their further demand may be retained ; or the interest may be received, *and the principal remain due*.

This may be observed ; if he, by whom no term was stipulated, demand the debt, a dividend shall be paid to him ; if he do not demand it, but the period in which a debt is doubled be past, the debtor should call him and pay the sum. In like manner, should the term of any man's loan be expired, the debtor should call him. But, if any creditor be absent in a foreign country, his dividend should be deposited with a confidential person. Such is the full meaning of the law.

The following text propounds a distinction :

CCLXXXI.

CĀTYĀYANA :—That capital on which it is proved that the assets were gained, and no other debt, must be repaid by the debtor *out of those assets*.

If there be at once many creditors of the sacerdotal and other classes, he through whose loan the assets were gained must be paid out of those assets ; not any other creditor. Should a surplus remain, it shall be paid to the other creditors, by a dividend, or in the order of classes. For example : borrowing a sum from one man, and therewith paying the revenue which is due to the king by the custom of the country, or supporting his own dependants and the like, the debtor conducts agriculture ; the produce of that culture is applicable to the payment of the debt
due

due to that creditor alone. But if he borrow money from another man, and during the season of culture perform other work to avoid idleness, that loan must also be considered as applied to husbandry, *which was his chief employment* : and such is the practice. But a debt contracted for the charges of celebrating nuptials or the like, even though it be contracted on the same day, constitutes a weaker claim in respect of wealth acquired by agriculture, since it was not applied to that purpose.

Again ; in the case of commerce and the like, assets gained by traffick, and similar means, are applicable to the payment of the creditor claiming a debt contracted for the purchase of goods, for the discharge of the king's duties, for the maintenance of servants, and so forth. In like manner, borrowing a sum from one man, he redeems a pledge hypothecated to another ; in that case, should the debt remain undischarged, he must deliver or sell that pledge for the payment of that creditor and no other : he has no right to pledge the chattel to any other man. Again ; a husbandman cultivates land belonging to a certain person ; and the landlord borrows money from the husbandman, or the husbandman from his landlord ; in either case, the debt of that creditor alone shall be discharged out of the grain produced from that land : for those assets, consisting in grain, were produced from that capital, whether land, or seed and plough. Such is the consistent method of CHANDÉSWARA and the rest.

However, should he deliver those assets to another person through mistake, or hypothecate that pledge to another creditor, the act is valid ; for the assets were the property of the debtor. Nevertheless, the creditor may forbid it ; and if the debtor slight that opposition, he shall be fined. In like manner, even though unopposed, if he do so deliberately, he shall be fined ; for the reason of the law is the same. This should also be argued in the case of payment *to a favoured creditor* neglecting the order in which the debts were contracted, or the order of classes.

Here a question occurs for consideration. If the landlord or the husbandman above mentioned first borrowed money from another, pledging to him the produce of the land for that year, and afterwards receive a loan from the husbandman or landlord, in that case—who shall be paid out of that produce ? To this question

question it is answered, the whole shall not be paid to the last creditor ; for, were it so, there could be no such practice in money-lending as that of pledging the produce of land owned or cultivated by another ; nor *shall it be paid* to the first creditor, for the text would be almost unmeaning, since no loan would be made without a pledge, lest a subsequent hypothecation *invalidate the prior lien*. To this it may be replied, since the subsequent loan had not taken place when the pledge was made, there can be no such lien on the land ; the hypothecation is therefore valid, and a subsequent loan cannot annul the valid hypothecation, and establish such a lien : it is therefore reasonable that the debt of the mortgagee should alone be discharged. However, the second creditor resists the disposal of the produce until his own debt be paid. This many excellent persons maintain. We hold, that an hypothecation subsequent to such a debt, *which gave a lien*, is not valid ; and the text therefore is not unmeaning. But some lawyers say, the text of CĀTYĀYANA (CCLXXXI) should be otherwise applied. A lien immediately arises on that produce, similar to a pledge ; since there is no authority for a reference to the *time of* contracting the debt. Hence the last creditor should alone be paid. But if the mortgagee, *at first* declaring, “ I will not lend the sum,” *at length* accepts the pledge with the assent of the other party, the hypothecation is valid.

The distribution of *dividends* should be made in the presence of the king's officers, or of arbitrators, to remove the apprehension of unmitigated offence ; the debtor should not make the distribution in the privacy of his own house. This has been sufficiently discussed.

CCLXXXII.

YĀJNYAWALKYA :—When the debtor has paid the debt, let him cause his writing to be torn, or another to be made as his acquittance ; but a debt contracted before witnesses, must be discharged before witnesses.

When the debt is fully discharged, let the debtor cause the writing

writing to be torn: but if the note be missing, let him cause another writing to be made as his acquittance. A debt contracted before witnesses, he should discharge before witnesses.

The *Dīpacalīcā*.

He should cause the writing to be so torn, or cancelled, that it may not be again produced on another occasion. But if the writing were attested, the payment should be made, and the deed cancelled, before witnesses; for such is the import of the text, "a debt contracted before witnesses, &c." else it might be suspected that the debt was undischarged. "As his acquittance;" the term is in the seventh case, with a causal sense. Let him cause another writing to be made; namely, that which is denominated a written discharge or acknowledgement of payment. This also should be attested, or be made in the creditor's own handwriting; as suggested by a text cited in the *Vyavahāra tatva*, and already quoted in this work (XIII).

The form of the writing should be regulated by the established custom of the country, and it has been already mentioned in the discussion on written contracts of debt: the very same form should be admitted in the present case; for it is directed generally, that "whatever contract shall have been concluded by mutual consent," a written memorial of it should be executed in that form (XVI). But, since that text is placed under the title of Loans and Deposits, the name of the lender or owner is directed to be first inserted in the writing: here the reverse should be done; for the word lender there intends the person whom the obligation regards; that is, him to whom the writing is delivered. Hence, in a deed of gift, the name of the donee *should be first inserted*; or in a bill of sale, the name of the vendee. This and other points may be argued. But in fact, says a certain author, the debtor is at that time an owner *delivering his own*; for he differs in nothing from one who delivers property. Hence the variation consists in this; that the debtor's name should be first inserted, because the debtor is the person whom the obligation regards. The creditor should sign his name on the top of the writing*; for the word "borrower," in the text of YĀJNYAWALCYA (XVIII),

* There is an inconsistency in regard to the place of signature, which I cannot well reconcile.

(XVIII), intends the person who executes the writing. This and other points should be understood.

CCLXXXIII.

VISHNU:—A debt contracted only before witnesses, may be discharged before witnesses only; *but*, a written contract being fulfilled, the writing should be torn.

“Before witnesses only;” else, if the payment be unattested, how can the debtor prove that payment, when the creditor subsequently sues before the king for the debt proved by verbal or other evidence?

CCLXXXIV.

NÁREDA:—Let the creditor give a writing after the debt has been acquitted; or, if that cannot be, let him make a *publick* acknowledgement: this shall be a mutual acquittance of the creditor and debtor.

Let him give a writing, that is, a written discharge, if the note be not at hand. “After the debt has been acquitted;” after it has been fully discharged. “A publick acknowledgement;” a declaration made before *unconcerned* persons, that the debt has been paid by this man. The *Retnâcara*.

Consequently, if a written acquittance cannot be given, the payment should only be made before witnesses. Should no writing be given, nor attestation made, the debtor might complain before the king, *in these words*, “he has exacted from me more than was due;” or, “he refuses to give a receipt.” Hence the creditor also would need an acquittance; it is therefore said, “a mutual acquittance or release.”

When the whole sum is not paid, but a part only, how should the bond be cancelled? For this cause YÁJNYAWALCYA adds the following rule:

CCLXXXV.

CCLXXXV.

YÁJNYAWALCYA :— If the debtor pay by little and little, let him write the sums paid on the back of his written contract, or let the creditor give a receipt signed by his own hand.

“ A receipt ;” a written acknowledgment of a sum received.

The *Retnácara*.

Let him write, “ Such a sum this day received by me, in part hereof, from such one, the debtor.” But the form must be regulated by the *current* practice alone. In his receipt should be written the sum which is paid, and the date on which that very sum is paid: he may subjoin sums previously received. Thus, he should write, “ so much money received this day, such sums received earlier, making in all such a sum *received to this date*.” Else, through the forgetfulness of his creditor, the debtor might in course of time obtain several receipts for a single payment; or, although that have not been done, the creditor might allege that it was done. This distinction appears admissible in our apprehension.

From the phrase “ let the debtor write the sums paid, &c.” it appears that the debtor alone should write the sums paid by himself on the back of the written contract: but the receipt should be written by the creditor; for the phrase “ signed by himself” may be properly referred to the creditor.

CCLXXXVI.

VISHNU :—Part only being paid, and the writing not being at hand, let the creditor give an acquittance written by himself.

“ Part only being paid ;” the whole amount of principal and interest not being fully discharged; (for instance, a distressed debtor, unable to pay the whole sum at once, pays it by little and little, from time to time :) in this case, the debtor should write

the sums paid by him on the back of the written contract ; or, the deed not being at hand, the creditor should give another writing to this effect, “ this sum has been received by me.” Such is the sense.

But if the writing be not at hand, then, even if the whole due be discharged, the creditor must give a writing signed by himself ; therefore does the legislator express, “ and the writing not being at hand.” Or the noting of partial payments on the back of the bond, as mentioned by YÁJNYAWALCYA, and the acquittance signed by the creditor himself, as mentioned by VISHNU, admit of two cases : if the writing be, or be not, at hand, and the debt be fully or partially discharged, the creditor should give an acquittance signed by himself. Herein CHANDÉSWARA concurs ; or the exposition may be thus ; if the writing be at hand, and a partial payment be made, it should be noted on the back of the bond, and a separate receipt should be also given, agreeably to the texts of both Sages. Should the creditor subsequently affirm, “ this debtor obtained the writing by artifice from my house, and has written sums on it though never paid,” that assertion may be easily confuted.

If the creditor produce not the writing, nor give one signed by himself for a sum received, what shall be done ? On this subject NÁREDA propounds the following text :

CCLXXXVII.

NÁREDA :—Having received a sum, the creditor should give a receipt to the debtor ; but he who refuses, when required to give *back* that *for which he granted no receipt*, shall forfeit the remainder of the debt.

“ Having received ” the interest ; such is the meaning. He who refuses *both* to give an acquittance and repay the interest when demanded, &c. The Retnâcara.

“ Interest ” is here supplied. The term signifies the interest of the debt. But, in fact, that is merely intended for elucidation ; the real sense is an incomplete payment. The use of supplying that term is this : when a part of the principal has been paid to the

the creditor, and he neither gives up the writing, *that the payment may be noted*, nor grants a receipt ; in that case, even though the creditor may be disposed to repay it, the debtor does not demand the sum paid ; for, *were it repaid to the debtor*, the sum would bear further interest from that day. Should a creditor, who has received a sum from the debtor, neither permit him to write the sum paid on the back of the contract, nor give the debtor a receipt signed by himself, surely the debtor will redemand the sum paid by him *as interest* ; if the creditor also refuse to restore it, he shall forfeit the remainder of his debt. The forfeiture of the balance is, as it were, a fine on the creditor for that offence.

CCLXXXVIII.

VRĪHASPATI : — If he who has recovered his debt by the mode of moral duty, or any of the others, refuse to write a receipt on the note, or to give an acquittance, the sum that was due shall be forfeited.

That creditor who has enforced payment of his debt by the mode of moral duty, or any of the others above mentioned, but will not permit the debtor to write the sum paid on the back of the note, or, if this were impracticable, who refuses to give a receipt, which is the next step, *shall incur this forfeiture*. 'Through knavery' should be supplied in the text. It also intends attestation, as mentioned by NĀREDA : the full meaning is, if he also refuse an attestation of the payment. In these cases, the sum due to the creditor would be forfeited ; the mood is potential. Because the sum which has been actually paid cannot be proved by the debtor without a writing or other evidence ; hence, since he may be liable to pay it again, the creditor may possibly receive more than his just due : such is the sense of the text. Consequently, over-exactions being improper, nothing should be done which tends thereto. But if any one do that which ought not to be done, he shall surely be punished. This is intimated in the text of VRĪHASPATI. It is therefore absolutely necessary to write the sum on the back of the note, or grant a receipt or the

like : such is the full sense of the text ; and punishment consists in the forfeiture of the balance, as ordained by NĀREDA. Since no law directs it, the fine shall not be received by the king. This exposition of the text of VRĪHASPATI, though not delivered by any former author, seems elegant.

Here the term employed (*vriddhi*) * signifies loss or forfeiture.

The *Calpateru*.

For the verb *vardh* is inserted in the *Ganacāmadhēnu*, with the sense of fill, and cut ; and this word is derived by the substitution of *vriddh* for *vardh*, a change which often occurs with this suffix. Or the verb *vriddh*, representing the verb *vardh*, as well as its own regular sense of growth or increase, through that medium presents the secondary sense of abscission, which is the regular meaning of the verb *vardh* ; as the term *dwirēpha* (two rs.) signifies a black bee, through the medium of the word *bharmara* (which contains two rs.) ; and the verb *ās*, sit, preceded by the particle *upa*, signifies adoration or worship, in the following verse of the *Cusumānjali*, a treatise of philosophy † :

He, the Supreme Spirit, is here described, the worship (*upāsti*) of whom wise men consider as the road to heaven and final beatitude.

Consequently, if the creditor, through knavery, do not permit the sum to be written on the note, nor give a receipt, nor cause his acknowledgement to be attested by witnesses, he shall forfeit the sum that was due, namely the sum lent by him : and the forfeiture must be understood, as in the text of NĀREDA, to be the forfeiture of the balance.

The *Cāmadhēnu* and HELĀYUDHA read *nāsau vriddhim avāpnuyat*, he shall not receive advantage, instead of *tasya tad vriddhim āpnuyat*. HELĀYUDHA says in his gloss : ‘ if the creditor, having
‘ received a small part of the debt, do not suffer the sum to be
‘ written on the back of the note, nor give a receipt, then, since
‘ he forfeits the remaining sum, he receives no interest or advantage
‘ tage

* Taking the word in its usual acceptation of interest, Sir WILLIAM JONES translated the text, “ the debtor shall gain the interest that was due.”

† By UDAYANA'CHARYA ; a treatise written to prove the existence of GOD, contested by the Atheists of his day.

' tage on it; for that is prevented by the forfeiture of the balance.' In effect there is no variance between the *Calpateru* and HELÁYUDHA.

The refusal to write a receipt, or give an acquittance for the sum paid, must be understood as arising from an intention of obtaining a second payment of the same sum: for, otherwise, there would be an inconsistency. The *Retnâcara*.

' Do not suffer the sum to be written on the note;' "by the debtor" should be supplied.

The creditor lends money solely for the sake of gain; and by that gain or interest he receives an advantage on his principal. Should even the remaining principal be forfeited, how can he obtain advantage from the principal sum? Consequently, by declaring that he has no advantage from the sum due, the forfeiture of the remainder is, in some sort, indirectly suggested; since the text coincides with that of NÁREDA, 'For that is prevented by the forfeiture of the balance;' this is a repetition intended to suggest the penalty as the *immediate* cause of *his* obtaining no advantage. Or that gloss may be read, 'for the forfeiture of the balance is the subject treated;' that is, it has become the subject through the text of NÁREDA. 'He shall not receive advantage,' suggests the penalty of losing the remaining sum; therefore does the commentator say, 'for the forfeiture of the balance is the subject, &c.' Such is the exposition of the *Calpateru* and HELÁYUDHA.

According to the *Cámadhênu*, the forfeiture of interest only is mentioned; not the forfeiture of the remaining principal. But in fact, according to this opinion, the sense so far explained must be further extended to the same purpose: else there would be a contradiction, repugnant to reason, in the forfeiture of the balance when a creditor has casually written no receipt or given no acquittance, but without intending to obtain a second payment of the same sum, while on the other hand a less penalty fell on a wilful offence. Consequently the text of VRĪHASPATI has the same import with that of NÁREDA, according to the gloss of HELÁYUDHA and the rest. Like mutilation and other punishments for other offences, the forfeiture of the balance is the punishment for the offence of refusing to write a receipt and so forth.

Some interpreters hold, that even on the other reading (*ne*

chaivôpagatam dedyât tasya tad vriddhim âpnuyât) the text may be explained in its literal sense, consistently with the gloss of the *Calpateru*, as denoting a forfeiture; while the word *vriddhi* retains the sense of gain, for the last negative is connected with the word "*âpnuyat*, may obtain," and the former negative (in the preceding hemistich) is connected with the word "should write," as well as with the word "*dedyât*, should give."

But the text is thus expounded in the *Pârijâta*: 'that sum which has been paid by the debtor to the creditor, shall obtain interest; that is, it shall carry interest.' Consequently, as the sum lent by the creditor shall be received back from the debtor with interest thereon, so shall a sum which has not been written on the back of the note, or for which no receipt has been obtained, be received back by the debtor from the creditor with interest thereon. This is stated by the Sage.

The creditor's motive may be generous. Thus a thousand *suvernas* were originally received by the debtor from the creditor, and five hundred *suvernas* have been subsequently paid, but not written on the back of the deed, nor any receipt given for them: in this case there is no forfeiture of interest on the thousand *suvernas* from the day when five hundred *suvernas* were paid, but interest runs on the five hundred *suvernas* from the day when they were paid, and that interest shall be paid by the creditor to the debtor. At the time of settlement, calculating interest in favour of both, and deducting the sum paid by the debtor, with interest thereon, from the sum lent by the creditor, together with the whole amount of interest, the remainder only shall be paid by the debtor. The creditor sustains some loss by this adjustment. For example: On the sum of one thousand *suvernas*, interest at the rate of an eightieth part amounts in one month to twelve *suvernas* and a half, and accumulates in six months to seventy-five *suvernas*: should five hundred *suvernas* be paid by the debtor at that very period, and the debt be finally discharged at the close of the year, the payment made by the debtor has accumulated to five hundred and thirty-seven *suvernas* and a half, and the sum lent by the creditor has accumulated to eleven hundred and fifty *suvernas*; and deducting therefrom five hundred and thirty-seven *suvernas* and a half, six hundred and twelve *suvernas* and a half are receivable from the debtor. But if the debtor wrote that sum as paid

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on the back of the note, or received an acquittance, interest amounting to seventy-five *suvernas* was receivable when the five hundred *suvernas* were paid : and, deducting that, four hundred and twenty five *suvernas* only cease to bear interest ; for so much only of the principal is discharged, and five hundred and seventy-five *suvernas* remain due out of the principal sum. Interest thereon for six months amounts to forty-three *suvernas* two *máshas* and five *raeticàs* ; adding this to the remaining principal, the sum due amounts to six hundred and eighteen *suvernas* two *máshas* and five *raeticàs*. The gain would therefore be five *suvernas* ten *máshas* and five *raeticàs* ; by rejecting which the creditor manifests generosity.

This, according to all opinions, can only be suitable when the agreement was made for interest payable at fixed periods. In some instances the debtor would sustain a loss. For instance : when stipulated interest has been fixed by the creditor at the rate of two *panas*, that interest is receivable by the creditor alone ; but legal interest only shall be received by the debtor, since no other rate was expressly settled. When a sum is paid by the debtor in liquidation of the debt, further interest at the stipulated rate ceases, on the sum paid, from the date of payment : but when the sum paid carries separate interest, the debtor sustains a loss, since he obtains legal interest only, while the creditor obtains the stipulated interest. It may be argued similarly in other cases according to circumstances. With an ignorant creditor the motive may be dishonest. For instance ; he will not allow the sum to be written on the back of the note, and refuses to give a receipt, apprehending, “ if I accept this sum in liquidation of the debt, my interest will stop ; ” he is not aware that, if the sum paid by the debtor be received otherwise, it will bear interest. This and other points may be argued.

In this case, if more than the principal and interest have been delivered by the debtor to the creditor through some mistake or the like, then, calculating interest thereon, the debtor is entitled to recover from the creditor the excess above the principal and interest due ; for the excess is similar to a debt due by the creditor. If the exact sum have been paid, but the period which limits interest receivable by the creditor be past, the debtor would be entitled, in that case, also to obtain interest on the sum paid by him : however, he does not exact it. All this should be understood in

those cases only where the sum is delivered with a purpose, *which may be expressed in these words*, "this property shall remain for the present in thy power;" the debtor shall have no interest, since the sum delivered was similar to a deposit. This and other points may be inferred from reasoning.

This method, authorized by the gloss of the *Pûrijâta*, is consistent with practice. According to this interpretation, a fine on the creditor is not propounded by VRĪHASPATI. But others explain the terms *of the text*, (which have been translated, "who has recovered the sum or debt,") in the apposition named *carmad-bâraya*; "the sum recoverable, or of which payment might be enforced," that is, in other words, the remaining sums. It should therefore be written on the back of the note, or on an acquittance, "so much money this day paid, and so much remaining due." On failure of that, the further sum to be recovered, *or balance of the debt*, is forfeited; taking the word *vriddhi* in the sense of loss, in conformity with the gloss of the *Calpateru*.

Is not a forfeiture incurred by the creditor, then, only when the payment made by the debtor is proved, as well as the fact of its not having been written on the note? But if the creditor neither permit that to be written, nor give a receipt, how can the payment made by the debtor be proved? Still less can his refusal to permit the endorsement be proved. It should not be said, the fact may be proved by witnesses; for, if the creditor receive the sum in the presence of witnesses, he incurs no penalty, since he is guilty of no offence. To this it is answered, when the debtor, having paid a sum to his creditor, demands an acquittance or other acknowledgement, but the creditor attempts to delude him, saying, "I will give an acquittance *hereafter*;" then the debtor, at that very time bringing other witnesses, shows the money lying before the creditor, or obliges him to acknowledge that "so much money has been paid by this man." His delusive promise of giving an acquittance, and that evidence, are both valid arguments of proof. In such a case only should the forfeiture of the remainder, as mentioned by VRĪHASPATI, be admitted.

In like manner, when the debtor pays a sum counted by a merchant, then the merchant proves the payment; the note wanting an endorsement is proof of no endorsement having been written,
and

and the refusal to give a receipt may be established by the want of evidence to prove the delivery of a receipt. Again; some person, standing in another place, observes the whole transaction; he also is a *competent* witness. This and other *modes of proof* are mere examples.

But, if the debtor, through knavery or the like, neither accept a receipt, nor write the payment on the back of the note, then also, from parity of reasoning, the debtor incurs a forfeiture of the sum paid, though it have not been noticed in texts of Sages or commentaries of Authors. This we deem proper and consistent with reason.

What knavery can the debtor purpose, that he should be averse from obtaining evidence of the sum paid by him? Having paid ten *suvernas*, he will affirm that he paid twenty *suvernas*: afterwards, when a doubt arises from the want of proof, he says, "let this man take his oath;" if the creditor, fearful of disrepute, refuse the oath, he loses his due: or, if he take the oath through love of money, the debtor would declare in various companies of worthy persons, "this man is dishonest; taking an oath, he has extorted from me a sum not justly due." This and other points may be argued.

Here an observation should be made. In all doubtful cases, a decision should be grounded on written documents or verbal evidence. If those documents be in the handwriting of another person, they are good evidence, provided they be attested, under a text above cited (XIII). But if all the witnesses be dead, the document should be collated with other *instruments in the handwriting of the same persons*.

CCLXXXIX.

YÁJNYAWALCYA:—In a disputed case the document must be proved by the handwriting of the party or the like, by reasonable inference, by *evidence of the contract which the instrument records*, by a *peculiar mark*, by *connexion and dealings of the parties*, by *the contents of the document*, or by *previous recourse to measures for recovery*.

This

This document is not admitted by both parties ; and it is questioned whether it have, or have not, been lately written by one party on paper to which the appearance of antiquity has been given by the application of mustard-seed or the like : in this case proof must be deduced from the handwriting of the party or the like. But if it were written by another person, it must be proved by the handwriting of him *who wrote it*. In the *Dīpacalīcā* “reasonable inference” is explained ‘what seems reasonable in respect of that man, at this time, and in this place.’ “The contract,” such as the devesture of property or the like, proved by witnesses. “A mark,” not generally used. “Connexion ;” previous dealings of receipt and the like between the giver and receiver. “The document ;” probably authentick for such a sum lent by this man. “Measures ;” modes of recovery. By these proofs, namely, by the handwriting of the party, and the rest, let a contested document be justified. Under the term “or the like” is comprehended the handwriting of the witnesses or scribe.

CCXC.

CĀTYĀYANA :—Should the handwriting of the debtor, whether living or dead, be questioned, the document must be collated with other instruments in his own handwriting.

“Reasonable inference,” according to the preceding gloss, may be thus exemplified. This man’s father deceased at that time ; he needed a loan for his father’s funeral rites, but obtained it from no other person ; it is therefore reasonable to conclude that he contracted a debt with this creditor alone. This and similar points should be also argued in the case of gift and the like. It is affirmed by this man, that he sold a cow for the purpose of lending this money ; “that is probable, *says a witness, for I know that he did sell a cow at that very time.*”

“An uncommon mark ;” the practice of using such a mark in writing may be evidence against the individual person, not against any other. Or the mark may be a plough, usually designed as a signature by husbandmen ; a wheel, by a potter ; a particular

particular weapon, by those who bear such weapons ; and a *hand and arm*, a type of the thunderbolt, by certain persons, and so forth. “ Connexion and dealings ” are obvious. “ *Contents of the document* ; ” by the term here used, the written document is signified: it is probable that four *suvernas* may have been lent by this wealthy person to that indigent man ; hence this document is probably authentick. “ *Modes of recovery* ; ” for instance, if he were not indebted to this man, why did he promise, when formerly brought before the king, that he would pay after the lapse of seven days ? Consequently, the previous recourse to measures for recovery, such as the mode of moral duty and the rest, removes the doubt concerning the writing.

“ With other instruments in his own handwriting ” (CCXC) ; if the scribe say, “ this was not written by me,” he should be told to write another paper, and the document should be collated therewith, and that *of course* when the scribe is living ; but if he be dead, it should be thoroughly examined by comparison with a former writing produced. Whether alive or dead, it is proper to collate it with his handwriting in a former document. This has been sufficiently discussed.

If by chance the writing be *carried* elsewhere before the debt be discharged, what shall be done ? To this incidental question YÁJNYAWALCYA replies :

CCXCI.

YÁJNYAWALCYA :—If the instrument be *inaccessible* in another country, or written in a wrong form, or destroyed, or illegible, or stolen, or gnawed by *vermin*, or burned, or torn, the debtor must give another writing.

If the instrument exist in another country, whence it cannot be brought back, the debtor must give another writing. The recital should be thus : “ having received a loan of such a sum, I gave a writing, and now give another document, because that has been carried to another country.”

“ Written in a wrong form ; ” being at first written, through ignorance,

ignorance, in a form contrary to law. "Destroyed;" by moisture or the like. "Illegible;" from the defect of the ink, and so forth. "Stolen," by robbers or others. "Gnawed," by insects or any vermin. "Torn," rent in two. *In these cases another writing should be executed with the consent of both parties.* The *Dipacalica*.

A decision should be grounded on any one of the proofs mentioned; namely, evidence of the handwriting, and the rest; or on two or more arguments. If no such proof can be adduced, oath or ordeal must determine the contest. Consequently, on failure of documents, when a decision cannot be grounded on written evidence or similar proof, the legislator admits the oath of the party. The *Dipacalica*.

And this must also be understood in the case of a bill of sale, or the like; for it is mentioned generally. All this is ordained when the debtor is living; but, if the debtor have deceased, what shall be done? To this *VRĪHASPATI* replies (CXXI).

"Has absconded" (CXXI 2); is absolutely not to be found, having absconded or the like. "Notice having been given to the paternal or maternal kinsmen of the debtor, the creditor may seize and obtain his due" (CXXI 3; the last portion of which text is read, *tad bandhu jnyāti viditam pratigrihann avāpnuyāt*, notice having been given for the assurance of that debtor's relations). The *Retnācara*.

But *MISRA* reads, *tad dhanam jnyātrī viditam pragrihan nāpārādhnuyāt*, and thus comments on it; 'the creditor, recovering his due by violence or the like, shall not be punished by the king.'

"He must relinquish the balance" (CXXI 2); he must deliver it to the heir of the debtor, or to the king; but the property of *Brāhmanas*, on failure of heirs, he must cast into the waters. These texts are otherwise expounded as relating to the title of Redemption of Pledges.

But if the creditor be dead, to whom should the debt be delivered? *NAREDA* (CCXXXI) replies to this question. That text has been already expounded.

"Those who are distant" (CCXXXI); kinsmen, other than his offspring, and near kinsmen of the same race, but allied to his father or mother. "A creditor of the priestly class;" illustrative of every class. The *Retnācara*.

It

It should be here noticed, that the precept for casting the sum into the waters regards the priestly class only ; the king may take the property of others on failure of all heirs. If there be any legal heir, why should he cast it into the waters ? In this exposition MISRA and others concur. “ Bestow it on priests ” (CCXXX) ; on learned and worthy priests : for it coincides with the text of DÉVALA above quoted.

An observation may be here made. If a man became surety for a debtor from whom he has received a pledge, should that surety die leaving no son, in whose possession ought the pledge to remain ? To this question it is answered, if the receipt of the pledge by the surety be proved, it shall be delivered to the creditor ; for the debtor was not trusted : and from that day the debt becomes one secured by a pledge ; it shall therefore only bear interest at the rate of an eightieth part or the like. This and other points may be argued.

YÁJNYAWALCYA :—If a husband, in a famine, or for the performance of some indispensable duty, or during extreme illness, or while a creditor keeps him confined, should appropriate the wealth of his wife, he shall never, *while his distress lasts*, be compelled to restore it.

“ Or while a creditor keeps him confined,” while a creditor or other person becomes the occasion of his nourishment being suspended or the like. The *Dípacalicā*.

From the mention of “ husband ” in this text, it follows, that the wealth of a woman, borrowed by any other person, must necessarily be repaid *.

The twenty topicks, comprised under the forensick title of Loans and Payment, have been thus briefly discussed.

* Some remarks on the subject of pledges, which were subjoined in this place, I have transferred to the chapter on Pledges.

BOOK II.

ON

DÉPOSITS, SALE WITHOUT OWNERSHIP,
CONCERNS AMONG PARTNERS,

AND

SUBTRACTION OF WHAT HAS BEEN GIVEN.

CHAP. I.

ON

DEPOSITS

AND OTHER BAILMENTS.

SECT. I.—*On the several Sorts of Bailment.*

I.

VRIHASPATI :—Under the title of Loans and Payment, the law has been declared, from the delivery of the loan, and so forth, to the recovery of the debt: Now hear the complete rules for Deposits and other bailments.

“Delivery,” or advance; delivery to a borrower asking a loan in these words, “lend me money;” of course *it means* the delivery

livery of money *thus* becoming a loan. Beginning with this, and ending with compulsory payment, that is, with the recovery of the debt, the title of law, called Loans and Payment, has been promulged. The proper order of the subject is thus imitated; for MENU, enumerating the eighteen titles of law, has first mentioned Loans, and next Deposits: the pupil, therefore, is first required to study the law of Loans, and next that of Deposits, because it is next in order.

II.

111. MENU:—Of those *titles*, the first is debt on loans for consumption; *the second*, deposits, and loans for use; *the third*, sale without ownership; *the fourth*, concerns among partners; *the fifth*, subtraction of what has been given;

4-H. 2. *The sixth*, non-payment of wages or hire; *the seventh*, non-performance of agreement; *the eighth*, rescission of sale and purchase; *the ninth*, disputes between master and servant;

3. *The tenth*, contests on boundaries; *the eleventh*, assault and slander; *the twelfth*, larceny; *the thirteenth*, robbery and other violence; *the fourteenth*, adultery;

4. *The fifteenth*, altercation between man and wife, and their several duties; *the sixteenth*, the law of inheritance; *the seventeenth* and *eighteenth*, gaming with dice and with living creatures: these eighteen titles of law are settled as the groundwork of all judicial procedure in this world.

Among these eighteen titles of law, that of Loans and Payment is first discussed in this work. Its definition has been propounded by NÁREDA (Book I, v. 1). Bailment, consisting in the intrusting of one's own property with another person; sale made by one who is not owner of the effects sold; the mode of proceeding

ing among associated traders and the like ; the resumption of effects giving away, believing of the donee an improper object of donation, or through anger or the like ; non-payment of wages, or of the hire of a servant or labourer ; breach of contract ; rescission of purchase, and rescission of sale ; disputes between master and herdsman ; contests on the boundaries of towns and the like ; slander, or contumelious invective, and so forth ; assault or battery, and similar injuries ; larceny, or private stealing ; robbery, or violent seizure of property ; adultery, or intercourse of a woman with a man other *than her husband* ; duties of a husband with his wife ; distribution of the paternal estate or the like ; “ gaming with dice,” that is, play ; “ gaming with living creatures,” or fights of birds, rams, and other living creatures : these eighteen titles of law are the ground-work of judicial procedure. Challenges, or gaming with living creatures, being distinguished from other modes of gaming, the number of eighteen is completed. CULLÚCABHATTA.

Loans have been discussed ; sale without ownership shall be subsequently considered. What is ordained, is a “ precept or rule ” which must be fulfilled (I). Consequently, the meaning of the phrase (I) is, “ hear, that is, attend to, what is to be done in respect of bailments ; namely, the form of making a deposit, and so forth, unto the form of receiving it.” NÁREDA defines a deposit :

III.

NÁREDA :—Where a man bails any of his effects to another, in whom he has confidence, and from whom he has no doubt of receiving his property again, it is a deposit, which the wise call *nihcshépa*.

“ Where ” is here employed in the sense of ‘ when ; ’ one suffix being substituted for another. Or else, “ where ” has the termination of the seventh case, denoting subject ; consequently that in respect of which the agent, entertaining no doubts of receiving his property again, performs acts which make it a deposit, or an act amounting to bailment, is a deposit : or the settled rule concerning deposits is a title of judicial procedure.

Is the sense of the word grounded jointly on its use and derivation, or on its acceptation only? The latter is intimated by CULLÚCABHATTA, who thus explains the word, 'the intrusting of one's own property to another person:' and the author of the *Mitácsharā* says, '*nihcshēpa* is the committing of property to another in his presence.' According to this opinion, it has a secondary sense, namely that of *the thing* deposited, in the expression "make a deposit*" (XI): for a derivative of this form may be admitted in a passive sense. When a man bails his own property, it is a bailment of his own property, or the property is a bailment. According to the opinion wherein it is maintained that the word means the thing bailed, the sense is the same in both texts: herein many authors concur. Consequently *nihcshēpa* denotes generally both the delivery of a man's own effects to another without annulling his own property in them, and the effects so delivered.

"In whom he has confidence," is mentioned descriptively, and not as denoted by the term; for a man will not intrust his property to another without confidence in him. "Any of his effects;" any of the effects in his power: therefore, when the king commits contested property to another person, it is a deposit.

Does not the sense ascribed to *nihcshēpa* comprehend a pledge, or the delivery of a pledge? It may be so: a deposit does arise in a pledge and the like. But when it is questioned whether a deposit or a pledge shall prevail, deposit, different from a pledge, is intended; in like manner as one name of kine may denote cattle of that sort, and a synonymous term in the same sentence may intend cows only: or the objection may be removed by saying, "without contracting his own dominion over them," instead of saying, "without annulling his own property in them."

Upanid'hi is a distinct sort of deposit, of which, CULLÚCABHATTA says, it is a distinction similar to that of religious mendicant and *Brahmāna*: what the distinction is, YÁJNYAWALCYA declares:

IV.

YÁJNYAWALCYA:—A thing enclosed *under seal* in

* Literally, "bail a deposit."

in a box or casket, which the owner delivers into the hand of another, without mentioning *its kind, form, or quantity*, is called an *upanid'hi*, and must be restored in the same condition.

A box, casket, or other thing containing that which is to be bailed; a thing contained therein under seal, which the owner with confidence delivers into the hands of another for safe custody, without mentioning its kind, form, quantity, or the like, is called an *upanid'hi*. The *Mitácshará*.

“A box,” or vessel with a lid and so forth, containing the thing bailed. The *Retnácara*.

‘The thing bailed’ signifies the thing which becomes a deposit.

“That which the owner so delivers:” ‘thing’ must be supplied as the subject, *to which the word “that” is joined adjectively*.

“A box or casket;” a closed vessel, or the like, containing the deposit. The *Dípacalicá*.

The word ‘deposit’ is there considered as signifying the chattel bailed. BHAVADÉVA cites the *Sárja**, ‘A certain vessel is called box or casket.’ “Such a deposit is called *upanid'hi*;” for a bailment under seal is a deposit. Open and sealed deposits are similar, *being bailments*. So JATÁD'HARA. From *upanid'hi* is derived *aupanid'hica*, the word used in the text; and it signifies ‘belonging to a sealed deposit.’

V.

NÁREDA, cited in the *Mitácshará*:—When a thing is deposited, under seal, without mentioning its quantity; if its kind and form be unknown, it is considered as an *upanid'hi*: but the wise call a specified deposit *nihcshépa*.

“If its kind and form be unknown;” if the depositary know not whether it be gold, or silver, or what. “Under seal;” secured by a private knot to prevent its being taken by another person,

son, or secured by the impression of a seal on which particular letters are engraved ; when a thing is so deposited, the bailment of it is *upanid'hi*. A specified deposit (or the bailment of a thing, of which the quantity, kind, and form are mentioned,) the wise call *nihcshēpa* ; and the construction is the same if deposit be referred to the thing deposited.

Since the text of NÁREDA clearly shows a distinction between open and sealed deposits, the distinction should be called evident : why does CULLÚCABHATTA compare this distinction to that between *Bráhmāna* and mendicant ? In the text of CÁTÝÁYANA (XXXII), sealed deposit is comprehended in the word *nihcshēpa* ; and NÁREDA, after premising the general sense of this term, propounds a distinction in a subsequent text : consequently it has both a general and a particular sense, as twice-born denotes the *Bráhmāna*, *Cshatriya* and *Vaisya* collectively, and also the *Bráhmāna* separately : and further, VRĪHASPATI, premising *nihcshēpa* (I), explains *nyāsa* separately from it, but not separately from sealed deposits.

VI.

VRĪHASPATI:—When any thing is carried and placed *in the house or on the ground of another, notice being given to him* by the owner, who has fear of the king, or of robbers and the like, or who wishes to deceive his heirs, it is called *nyāsa*.

According to the gloss of CHANDÉSWARA. “Notice being given to him,” is supplied in the text, to exclude a thing deposited without the depositary’s knowledge : there is no fault on his part if a thing deposited without his knowledge be lost. Why should a man place any of his own effects on another’s ground ? The text assigns a motive, “fear of the king,” &c.

If it be said, this is the meaning of *nyāsa*, not of *upanid'hi* ; the answer is, in the verse immediately following he mentions what is in fact denoted by the last-mentioned term.

VII.

VII.

VRĪHASPATI :— *And when a thing enclosed in a box is placed, without mentioning its kind, form or quantity, and without showing the thing.*

“ *Placed* ” is brought forward from the preceding text : it follows, that this describes *nyāsa*, for no other name is mentioned. Consequently, *nyāsa*, like *nibhṣhēpa*, has both a general and a particular sense. So in the text of MENU (XL), *nyāsa* comprehends both open and sealed deposits ; and it is constantly used by VRĪHASPATI in describing a depositary. According to the *Mitācsharā* and the rest, *nyāsa* is the delivery of a thing into the hands of a person belonging to the depositary’s family, with these directions ; “ give this to your master : ” and such a delivery occurs both in the case of open and of sealed deposits ; but VRĪHASPATI has expressly declared it in the case of open deposits.

VIII.

CĀTYĀYANA :—A commodity sold, the deposit of one who is absent, a pledge, a bailment for delivery (*anvāhita*), a loan for use (*yāchita*), and a deposit for commerce, are considered as *upanidhis*.

“ A commodity sold,” but for some cause remaining with the vender : so the text is expounded in the *Retnācara*. We hold that the word, taken in a passive sense, means the commodity *sold* ; but, if taken in a causal sense, it will intend *the price* of the commodity. “ The deposit of one who is absent ; ” explained in the *Retnācara*, a thing deposited by one who is gone to a foreign country. The meaning is, that a thing which a man who has gone abroad, but, considering the delay of his return, sends home by a messenger or a friend, is the deposit of one who is absent. MISRA and BHAVADĒVA explain it, a bailment by another while the owner is absent in a foreign country.

The *Mitâcsharâ* contains this gloss: 'When a thing is delivered into the hands of some person, and he subsequently delivers it into the hands of another, with these directions, "give this to the owner," it is a bailment for delivery.' The *Dipâcalicâ* concurs in this explanation: and CHANDÉSWARA holds, that a thing which had been committed to some person, and which is bailed by him to another, with these directions, "you will deliver this to such a man, the owner," is a bailment for delivery. The difference between the two opinions consists in the intervention of one or two persons: and the exposition is founded on the following text:

IX.

CĀTYĀYANA:—When a thing is bailed with these directions; "deliver this, as by my desire, to such a man, when he shall demand it for his own business," it is called *anwâdhi*.

What is bailed with these directions, "deliver this to another other than myself, and different from the owner," is *anwâdhi*.

The *Mitâcsharâ* and others,

"Deliver this to the owner," must be supplied; what is bailed with these directions, deliver this to another other than myself, *but who is* "the owner," is *anwâdhi*. The *Retnâcara*.

Both senses may be received; or even if the text be limited to one sense, the other may be assumed, from the expression "and the like," in the text of YĀJNYAWALKYA (X). A pledge transferred, as mentioned by MISRA and BHAVADÉVA, must also be included. A pledge received from another person, and delivered as a pawn to a creditor, on receiving a loan from him, is named a pledge transferred. We do not find whence the author of the *Mitâcsharâ* has said, in explaining *nyâsa*, that the difference consists in the delivery of the thing into the hands of a person belonging to the depositary's family: for the difference is, that *nyâsa* supposes one person; but a bailment for delivery supposes two.

How has CHANDÉSWARA distinguished *nyâsa*, *nihcsbêpa*, and *anwâhita*? It cannot be said that he holds *nyâsa* and *anwâhita*

to

to be the same: for that exposition could not apply to the text of YAJNYAWALCYA, where both are separately mentioned.

X.

YAJNYAWALCYA:—This is the rule respecting a loan for use (*yáchita*), a deposit for delivery (*anwàhita*), a deposit unspecified (*nyàsa*), and an open bailment (*nihcshépa*), and the like.

“When he shall demand it for his own business” (IX). By this expression is meant, if any person require a thing, and it be sent by a messenger, it is *anwàhita*. Some hold, because the word “owner” is constantly employed in the *Mitácshará* and other works, that the distinction is as follows: effects and the like, previously deposited, which are delivered to the owner through the medium of another person, are *anwàhita*; and what is bailed by the owner, through the medium of another, is *nyàsa*. But the word “owner” is not found in the text of any Sage, to ground upon it the opinion of these authors. HELÁYUDHA, reading “when he shall demand it for this purpose,” thus expounds the text: ‘when a thing is bailed with these directions, “deliver this to such a man, when he shall demand it for this purpose,” it is called a deposit for delivery (*anwàdhi*).’ The meaning is, that if some person, to oblige another, intrust any chattel employed at nuptials to some other person, with these directions, “when DÉVADATTA requires this to use it at nuptials or the like, deliver it to him,” that chattel is a deposit for delivery (*anwàdhi*). Or if a man himself, or by a messenger, demand payment of a debt, and the debtor, after two or three days, deliver the amount of it to some other person, it is a deposit for delivery (*anwàdhi*). According to CULLÚCABHATTA and others, the word *anwàdhi* is either in a secondary sense, or is derived in a passive form. According to others, it is derived in a passive form, with a sense founded jointly on use and derivation.

‘Clothes, ornaments and the like, requested and obtained,

for a marriage or other occasion of rejoicing, are loans for use' (VIII). The *Mitácsharā*.

In this CHANDÉSWARA and 'SÚLAPÁNI concur. The *Dípacalicā* expresses; "they are considered as *upanid'hi*" (VIII), which is called *nyāsa* by VRĪHASPATI. The meaning is, whatever are the rules in regard to a sealed deposit, from the delivery to the recovery of it, the same are to be admitted in these cases. This is expressly declared in the text quoted from YÁJNYAWALCYA (X): and it is directed by a text which stands near the definition above quoted.

XI.

NÁREDA:—This very law is enacted in *the case of* loans for use, deposits for delivery and the like, bailments with an artist, sealed deposits, bailments in the form called *nyāsa*, and mutual trusts.

2. If a man privately receive a fine, or a valuable chattel, the law is the same in that case: these are declared to be the six sorts of deposits.

Loans for use, and deposits for delivery (*anwāhita*), have been explained. "And the like," comprehends commodities sold, and so forth. "Bailments with an artist," explained in the *Retnācara*, things committed to an artist for ornaments and the like; and in the *Mitácsharā*, gold or similar *materials* delivered into the hands of a goldsmith or other artist, to be worked into a necklace or other ornament. These are comprehended under the words "and the like," in the text of YÁJNYAWALCYA (X). "Sealed deposits," (*upanid'hi*), already explained. "*Nyāsa*," according to VIJNYÁNÉSWARA and CHANDÉSWARA, signifies effects not shown to the owner of the house, but delivered in his absence to a person belonging to the house. According to CHANDÉSWARA, the *nyāsa* mentioned by VRĪHASPATI is a form of *nihcshépa*, and different from this. So many are the sorts of deposit (*nihcshépa*), says CHANDÉSWARA; for NÁREDA employs this term in a general sense.

CHANDÉSWARA says, when a man privately receives a fine,
as

as there is no evidence of his levying the fine, this very rule is *applicable*; and also when a man privately receives a valuable chattel, since there is no evidence of the receipt. Consequently if a man, to expiate a very infamous crime accidentally committed, pay a private fine to the king through a publick officer, and that officer, acting fraudulently, deny the payment of the fine; or if the king's officer assert that a fine has been paid, though none have been exacted; this very rule is applicable, namely the rule declared for deposits: and if a man privately receive back a loan, a deposit, or the like, which he had himself given, and subsequently deny the receipt; in that case also this very rule is applicable. It is asked, what rule? The want of evidence being mentioned, it follows, that other proof must be sought: therefore, as ordeal is admitted when proof is sought of a deposit and the like, so, in this case, *ordeal is also admitted*. Such is CHANDÉS-WARA's meaning. But it must be here considered, that ordeal is not mentioned in the text of NÁREDA, and is not intimated by the words "this law." Others say the words ("the law is the same *in the case* of fines, &c.") intend the delivery on demand and so forth.

HELÁYUDHA reads, if a man receive a *pógenda*, or adolescent; consequently, according to him, the law respecting an infant received with valuable effects, is the same with that respecting deposits: it will be mentioned; and the whole of the law, declared under the head of Deposits, must be understood. A deposit may occur in regard to an infant. Thus a child, whose father and mother are deceased, is bailed by the king or his officer, or by the child's maternal uncle; in this and in other cases a deposit arises.

How is the law of deposit (*nibcshēpa*) extended by the Sage to mediate and unspecified deposits (*nyāsa*), since what is denoted by *nibcshēpa* is found in *nyāsa* and the rest*? CHANDÉS-WARA reconciles it thus; "some distinction may be supposed." The distinction is mentioned by CULLÚCABHATTA; "like that between *Brāhmaṇa* and mendicant." Or peculiarities, different from those of *nyāsa* and the like, may be supposed in the definition of *nibcshēpa*: such as, delivered before witnesses; different from bailments with artists; or the like. There are only six sorts of deposits;

* And therefore, what in its nature belongs to them, is not extended to them.

deposits; for, in judicial procedure, *nyāsa* extends to the mere delivery of a chattel for safe custody; and loans for use and deposits for delivery are held one sort: and whatever is included in the words “and the like,” is also considered as a single sort of deposit; and the receipt of a fine, or of a valuable chattel, is also admitted as a single sort of bailment. This is the method of the ancients: but according to the author of the *Mitācsharā*, who admits the separation of loans for use, deposits for delivery and the like, a mediate and unspecified deposit (*nyāsa*) and mutual trusts (*pratinyāsa*) must be considered as a single sort of bailment. A mutual trust may thus arise, according to the author of the *Mitācsharā*: “let your jewels or the like remain with me, who reside in a secure place; and let my copper vessels and similar effects, which are coveted by my heirs, remain with you;” on such an agreement, the effects are mutually bailed. In some cases, mutual deposits are made in the form of a sealed bailment; and in the case mentioned, a mutual deposit arises in the form of an open bailment, not a mutual deposit in the form of a mediate bailment (*nyāsa*): for the author of the *Mitācsharā* holds *nyāsa* to be a delivery into the hand of a person belonging to the house. But there is no difficulty, for the word *pratinyāsa* comprehends mutual deposits in other forms.

XII.

VRĪHASPATI:—If a contest arise concerning a deposit privately made, proof by ordeal is directed for both parties:

2. In the case of a deposit for delivery, a loan for use, a bailment with an artist, and a pledge, the same law is enacted; and likewise in the case of a person received under protection.

If the depositary do not acknowledge a deposit privately received; or the bailer, having received back what he had himself deposited, deny the receipt; or if he allege a deposit, though none have been made: in all these cases, ordeal is directed, if there

there be no evidence: this will be explained in its place. CHANDÉSWARA says; if a contest arise concerning a woman, a slave and the like, who, from fear or other motive, have sought protection, and are claimed by their lord, the same law is enacted. The meaning is, that, in this case also, proof by ordeal is directed.

Here all the rules declared in regard to a private deposit, are to be applied to each case, from deposits for delivery, to persons received under protection. Therefore, a depositary protects what he has received in trust, like his own property, from water, fire, thieves, and other danger; and likewise in the case of a person received under protection. Wherever the property of one person is, for some cause, delivered into the hands of another for safe custody, the rules declared in regard to deposits are to be applied: therefore, the law of bailments applies to a carriage and the like received on hire; and so in the case of a person delivered by the king or the like into the hands of a guardian, or the produce of a field bailed for safe custody by a subject. What is the law in respect of bailments, which is extended to loans for use and the like? It is answered, all the rules propounded by Sages, from the delivery to the recovery of a deposit, must be understood.

XIII.

MENU:—A sensible man should make a deposit with some person of high birth, and of good morals, well acquainted with law, habitually veracious, having a large family, wealthy and honest.

“Of high birth;” sprung from an honest family. “Of good morals,” whose conduct is laudable. “Habitually veracious;” in his discourse observant of truth. “Having a large family;” having sons, grandsons, or other family to support. “Honest;” plain in his dealings, void of artifice, and so forth. With such a person should he make a deposit. Such is the interpretation approved by CULLÚCABHATTA.

“Having a large family,” is explained in the *Viváda Chintámeni*,

meni, having many kinsmen. In the *Retnâcara*, “a deposit” is expounded the thing to be bailed. “High birth,” and the rest, are conditions required to obviate all doubt of receiving back the deposit at a subsequent time: for, since the abuse of a deposit is a heinous crime, a person sprung from a good family will not abuse it; much less a person of good morals, and well acquainted with law. A man habitually veracious will not assert a falsehood. Why should a wealthy man, content with his own wealth, commit a heinous crime by embezzling another’s property? An honest man cannot commit a fraud. One who has numerous offspring, even though he believe not another world, will not embezzle the property lest his offspring perish. Or it may be thus explained; he who has no offspring, being unaided, cannot well protect the deposit. This agrees with the exposition of MISRA and others. The description is general, including exemption from other defects. The whole of it must be taken as a motive for confidence. So NÁREDA *says* (III), “when a man bails any of his effects to another, in whom he has confidence, &c.” In this text (XIII) deposit is used in a general sense, comprehending bailments under seal and the rest.

XIV.

VRĪHASPATI:—A man should make a deposit with due consideration of the place, of the house, of the master of the house, and of his power, wealth, qualities, veracity, purity, and kindred.

“The place,” which contains the thing deposited; with due consideration, whether it be secure from robbers and the like. Or “the place,” may intend the town; considering the safety of a populous place, where the property is protected by many. “House,” or wife, (for the word has both senses;) considering whether the wife be virtuous, lest at her suggestion the effects be secreted; for a man, though virtuously disposed, may be instigated, through lust, to secrete the effects. Or considering whether the “house” be built of masonry, and secure from fire. “His power;” is the depositary capable of protecting the effects?

fects? "His qualities;" his honesty, his acquaintance with the law, and the like. "His purity;" his avoiding sin, and so forth. "His kindred;" his sons, grandsons, and the rest.

XV.

NÁREDA:—A deposit is declared to be of two sorts, attested and unattested: it must be restored in the condition, *and manner*, in which it was bailed; if altered, there must be a trial by ordeal.

An unattested deposit is made, when a man has the highest confidence in another. If it be asked, why a similar distinction of loans has not been mentioned? it is answered, that, from the nature of a loan, it must either be authenticated by witnesses or by a writing; for excessive confidence is forbidden.

A rule of Ethicks:—Place not confidence in what is unworthy of confidence; nor excessive confidence in what is *even* worthy of confidence*.

The purpose of a deposit made to deceive heirs (VI) would be defeated, if it were publickly known. The selection of a proper person for the confidence reposed in him, at the choice of the owner, must necessarily be admitted, in contradiction to that rule of ethicks, to fulfil the purpose of a deposit: but in the case of a loan, the selection, at the lender's choice, of a suitable person for the confidence reposed, is not proper; *the rule is positive*, like the prohibition against lending to infants. Therefore a loan unattested is not mentioned; and in fact such is the present practice.

A deposit must be restored in the condition *and manner* in which it was bailed (XV). Thus, if it be bailed under a seal, it must be restored under that seal; if it be bailed before witnesses, it must be restored before witnesses; if it be privately bailed, it must be privately restored; so likewise if it be bailed without

* Cited from the *Herivansa*. See Book I, towards the end of the first chapter, p. 28.

without a seal, or unattested. Again ; if more than one make or receive a deposit, they shall jointly recover or restore it ; and similarly in other circumstances. The same meaning is to be understood from the text of YÁJÑYAWALCYA (V), and from the following text :

XVI.

1111
480.
MENU :—Whatever thing, and in whatever manner, a person shall deposit in the hands of another, the same thing, and in the same manner, ought to be received back by the owner. as the delivery *was*, so *must be* the receipt.

As it may be questioned whether the latter part be not superfluous, since it repeats what preceded, CULLÚCABHATTA says, ‘ it is mentioned as a cause : because it is a rule, that as the delivery was, so must be the receipt ; therefore the same thing ought to be received back in the same manner. This directs, that, if gold and the like have been bailed under a seal, and the bailer, breaking the seal, say, “ weigh it, and deliver it to me,” ‘ he shall be amerced.’ We do not find how it appears that he shall be amerced. If the bailer require it to be weighed, the king should compel him to receive it unweighed : and this is the purport of the text.

Here lawyers, unfettered by ordinances, say, two terms (“ from him, and by him,”) must be supplied : consequently the sense of the first part of the text would be, whatever thing (gold or the like), and in whatever manner, a person shall deposit in the hands of another, the same thing, and in the same manner, ought to be received by him the depositary, from him the bailer. The word delivery is in a passive form ; as *the thing was* delivered, so *it must be* received by the bailee : and if there be a subsequent contest respecting the quantity, and the king ask, “ why did you receive it unseen, or unattested ?” then the first part of the text furnishes an answer : “ it was *so* received under the authority of the law.” The intention of the latter part of the text is evident.

MENU clearly declares the form of a mutual deposit:

XVII.

XVII.

MENU:—But things mutually deposited should be mutually restored, by and to the person by and from whom they were received: as the bailment *was*, so *should be* the delivery.

DÉVADATTA intrusts a thing to YAJNYADATTA; and YAJNYADATTA intrusts a thing to DÉVADATTA: having been mutually received, the things should be mutually restored. One cannot alone receive his own property, *merely* because he delivered his own property. “As the bailment was, so should be the receipt:” a deposit received with or without attestation should be so restored. If one say, “let my chattel remain with thee,” and the other also say, “let my chattel remain with thee;” it is a mutual delivery: if one say, “let thy chattel remain with me, and my chattel with thee,” it is a mutual receipt and delivery: and if some person, seeing that another is unable to protect his property from robbers, and intending to confer a favour, say, “let thy chattel remain with me;” and if he, desirous of returning the favour, say, “thou hast many chattels of small value, let them remain with me,” it is a mutual receipt. Or the distinction between mutual receipt and mutual delivery may be explained in any other manner. Thus some expound the text: but CULLÚCABHATTA explains it by a deposit privately made; “a thing privately deposited,” &c. A delivery mutually attested, that is, not attested by others. “By whom it was received;” privately received by the depositary. “Mutually restored;” privately restored *to the bailer*: to restore it before witnesses should not be required. “As the bailment was, so should be the delivery,” is mentioned as the reason. “Should be restored;” this rule regards the depositary; “ought to be received,” &c. (XVI) regards the bailer: consequently there is no *vain* repetition.

XVIII.

VRĪHASPATI, quoted in the *Retnácara*:—The very thing

thing bailed must be restored to the very man who bailed it, in the very manner in which it was bailed: it must not be delivered to his heir apparent or presumptive.

If bailed before witnesses, it must be restored before witnesses; and without exceeding the period for which it was bailed, if a period were stipulated: and, in the case of mutual deposits, the receipt must be mutual. The *Retnâcara* interprets "his heir," &c. his son and the rest.

XIX.

VRĪHASPATI:—A deposit is declared to be of two sorts, bailed before witnesses, and privately bailed; it must be preserved as *carefully as a son is cherished*; for it would be lost by neglect.

2. The merit of one who preserves a deposit, or protects a dependant*, is the same with the merit of him who gives golden vessels or clothes.

3. As the crime of a woman who injures her husband, or of a man who kills his son or his friend, such is the crime of depositaries, if the thing deposited be consumed, or spoiled by gross negligence.

4. A *prudent* man would not receive a deposit; but to destroy it, when received, is infamous: he must keep it with care, and restore it on a single demand.

For a written contract of bailment there is no authority in the law, nor in judicial practice: but doubts may be now obviated by making such a contract. A deposit *must be preserved* from robbers, from vermin, from decay and the like; if no care be taken,

* Or a person received under protection (XII).

taken, and the thing be never inspected, it may decay in the ground; or be stolen by neighbouring thieves entering the house; or, if it be small, it may be carried away by rats: in these and similar modes it may be destroyed. Why should a man labour to preserve another's property? The text furnishes a motive (XIX 2). But he who is not desirous of religious merit, will not preserve it: therefore it directs, (XIX 3,) that the sinful taint of a husband's murder, and similar crimes, is contracted by alienating a deposit without permission, and by neglecting to preserve it. The preservation of it is indispensable; therefore, a deposit should not be received by a person who is not disposed to an act of duty or amity.

Here it must be noticed, that when the property of another is bailed by slaves, strangers, or robbers, to deceive the owner, that deposit ought not to be received; for usage *forbids it*: and the depositary might be suspected of theft, should he be unable to show that the bailer actually made him receive the deposit. If among undivided brethren one parcener deposit joint property with some other person, to deceive his coheirs, the depositary is censured.

"A man should not receive a deposit" (XX 4), because it is a crime in the depositary, if the deposit be consumed. "But, to destroy it, is infamous:" the particle may be taken in a connective sense; and the meaning will be, the consumption and the destruction of a deposit are infamous. "He must restore it on a single demand," if no period have been stipulated; but at the expiration of the period, if it were bailed for a stipulated time; or the bailer may receive it back sooner, with the depositary's consent.

XX.

MENU:—A deposit, whether sealed up or not, should never be re-delivered, while the depositor is alive, to his heir apparent or presumptive: both sorts of deposits are lost if he die, but not unless he die*.

* The latter part of the text has been otherwise translated by Sir WILLIAM JONES: "both sorts of deposits, indeed, are extinct, or cannot be demanded by

‘ They should not be re-delivered to the son, the brother, or other
 ‘ person who would be entitled to them after the bailer. To
 ‘ assign a reason, it is said, “ both are lost &c.” that is, because
 ‘ both are lost, if they are delivered to a son or other heir, and he
 ‘ dies without delivering them to the owner. It follows that, *in*
 ‘ *such a case*, they shall be made good by the depositary. But
 ‘ they are not lost, unless he die : they will be delivered by the son
 ‘ or other heir to the depositor ; they are not to be made good by
 ‘ the depositary. Consequently, if they be delivered to the heir,
 ‘ there is danger that the heir may die, and that the deposit must
 ‘ be made good ; therefore, neither sort of deposit should ever be
 ‘ redelivered to the heir.’ CULLÚCABHATTA.

He supposes this case ; the heir dies after receiving back the deposit, and long afterwards the owner says, “ the deposit was not delivered to my heir, but remains with you, give it me.” It cannot be said, that, since the same may occur in the case of a debt, the delivery to a son and the like is improper even in that case ; and therefore the text, which directs payment to one of the family in default of the lender, is unmeaning. In that case, the delivery may be ascertained by attestation. It cannot be said that here also it may be so ascertained ; for the attested recovery of an unattested deposit is forbidden (XVII) : and, even in the case of such redelivery of an attested deposit, the depositor’s claim remains. Thus *the owner might say*, “ on what consideration did you relinquish the deposit in my absence ?” but, in the case of a debt, the creditor cannot say so. The text is not unmeaning, for there is a purpose in making the payment ; namely, the recovery of a pledge when interest has ceased ; but, in the case of a loan unsecured by a pledge, upon which the highest interest has been received, the debtor may not repay it to the son or the like. In fact, there is no offence in repaying it to the son or other representative, on the consideration, that body is not immortal, and to remove the sin of debt ; for the debtor incurred the debt under the pressure of indigence. But, under the authority of the text, a deposit, voluntarily received, must be kept until the depositor return.

Again ;

the heir, if the depositor die, in that case ; but not unless he die : for, should the heir apparent keep them, the depositor himself may sue the bailee.” I alter the translation in conformity with the commentary.

Again ; this should now be remarked : we perceive no offence in re-delivering a deposit to the heirs of the depositor before witnesses, under the apprehension of ill treatment from those heirs, *even* before the expiration of the period for which it was deposited.

If a son or other representative should die after receiving back the deposit while the depositor was alive, and it have not reached the depositor, having been expended by the heir ; and this be proved by witnesses and the like ; must the depositary make good the deposit or not ? To this it is answered, that, according to CULLÚCABHATTA, it shall not be made good : for he says, both sorts of deposits shall not be made good, if there be no doubt ; and even sometimes, though the heir be not dead, they are not lost. Thus, if the heir be living, the depositary is justified by proof of the delivery to the heir : this is clearly expressed. What difference is there, if the heir be dead ? After the death of the heir there may be suspicion, if proof be deficient. It should be remarked on the term “ heir apparent or presumptive ” (*pratyantara* V. xx), that the word *prati* denotes similarity, as in the example “ ABHIMANYU like ARJUNA.” The word *anantara* signifies proximate without an interval. Consequently a deposit can be legally received back by the nearest heir alone.

But CHANDÉSWARA, without employing the word ‘ even,’ says : sometimes the depositor shall recover it, though the heir be not dead : it follows, that sometimes the deposit is extinct, though the heir be not dead ; that is, when the heir dissipates it without permission. Consequently, even in that case, it must necessarily be made good by the depositary ; otherwise, the expression “ but not unless he die,” would be unmeaning. In such a case it must certainly be made good. This is CHANDÉSWARA’S meaning, and is proper ; for, a son having no dominion over the paternal wealth while the father lives, his receipt of the thing deposited is not valid ; as is declared by HÁRITA (Book V, v. 8). Thus the son’s receipt of it is similar to a stranger’s receipt. But when it is any-how received by the owner, the delivery becomes valid. Consequently, if it any-how fail of reaching the owner, it must be made good. But if the son conduct all the affairs while the father lives, there is no offence in a re-delivery to him. However, a deposit, expressly bailed to deceive a son, must on no account be delivered to that son while the father lives, without his

directions: but, with his permission, there is no offence in re-delivering the deposit to the son; and, after the death of the depositor, there is no harm in the re-delivery of it to the heir.

XXI.

MENU:—But if a depositary, by his own free act, shall deliver a deposit to the heir of a deceased bailer, he must not be harassed either by the king or by the kinsmen *of the deceased*.

The expression “by his own free act,” implies, that while the bailer lives, it shall not be delivered, though demanded by the heir; but after the bailer’s death, it should be delivered, even without a demand.

CHANDÉSWARA.

He must not be harassed by the king, on the ground of its being the bailer’s property.

CULLÚCABHATTA.

“By the kinsmen” of the bailer; by his father’s sister’s sons, his mother’s sister’s sons, and the rest. The meaning is, that after the bailer’s death, his sons, or other heirs, have dominion over the effects deposited; and if a son be living, it must not be delivered to a grandson whose father is alive.

If a deposit, though carefully kept, be taken away by thieves or the like, there is no fault in the depositary.

XXII.

NÁREDA:—What is lost, together with the property of the bailee, is lost to the bailer; so if it be lost by the act of God or of the king, unless there was a fraudulent act on the part of the depositary.

“Lost, together with the property of the bailee;” meaning *generally*, if there be no fraudulent act on the part of the depositary. Thus, if the deposit only be lost, and not even a trifle belonging to the depositary, yet, if it were kept with care, and consumed by time only, there is no fault in him. If it be lost by

by the act of GOD (broken by a wall falling down), or be lost by the act of the king (plundered by the forces of a foreign king ; or oppressively sold, or the like, by the king of the country ;) then, as in the case of consumption by time, there is no fault in the depositary. But he is criminal if fraudulently he place the thing deposited near an old wall or the like, while he places his own property elsewhere ; or if, concealing his own property, he show the deposit to the king. The principle of this rule is, that the depositary must make good the deposit if he be in fault, and not unless he be in fault. But if the depositary say it is lost, though it be not lost ; then, on failure of evidence, it shall be tried by ordeal.

XXIII.

VRĪHASPATI :—If it be destroyed by the act of GOD or of the king, together with the goods of the bailee, there is no fault in him.

“ Together with the goods of the bailee ;” to denote that there is no fraudulent act on the part of the depositary. It is to be remembered, that if he deliver the deposit to the king, together with his own goods, without mentioning that it belongs to another, even in that case the depositary is criminal ; and if it were kept with care, then, even though the deposit alone be seized by thieves or the like, there is no fault in the depositary. Herein the *Retnācara* and the rest concur.

XXIV.

CĀTYĀYANA :—If a thing deposited be lost, together with the goods of the bailee, though not by the act of GOD or the king, it is declared to be lost to the bailer.

The loss of the bailee's goods, every where mentioned, is intended as a *general* exception to all fault in the bailee. It is therefore inferred, that even if the deposit alone be lost, but with-

out any fault in the depositary, it shall not be made good ; but if lost by a fraudulent act on the part of the depositary, it must be made good. The *Retnâcara*.

XXV.

YÁJNYAWALCYA:—But he shall not be compelled to replace that *deposit* lost by the act of God or the king, or seized by robbers.

He shall not be compelled to make good a sealed deposit, lost with the vessel in which it was contained, (being seized by the king, or washed away by water or the like, or stolen by thieves,) if there be no fraudulent act on his part. The *Mitâcsharâ*.

A similar exposition is delivered by 'SÚLAPÁNI, who reads the text *daivata*, instead of *daivica* (but the sense is unchanged). If it be lost by a fraudulent act on the part of the depositary, or by his fault, he shall be compelled to make good the deposit, and shall be amerced. This will be declared. A distinction is mentioned in the following text :

XXVI.

MENU:—If a deposit be seized by thieves, or destroyed by vermin, or washed away by water, or consumed by fire, the bailee shall not be compelled to make it good, unless he took part of it himself.

If a person receiving a deposit consume a part of it, and afterwards the remainder be seized by thieves or the like ; some hold, that, under the authority of the text, the depositary shall in that case make good the whole deposit. But others say, that the depositary shall make good the whole if he accidentally receive any part of the deposit which has been seized by thieves or the like. This is denied, because it is not fit that the loss should be his, without any fault in him : but if he do not make it known that he has received the thing, he is criminal, and shall make good the deposit, as in the preceding case. Since he is criminal, if he consume

consume any part of it, whether before or after it was seized by thieves or the like, he shall make good the whole deposit. This is the full meaning of the text. In that case he shall make it good with interest, if he consume a part of the deposit; but without interest, if he merely omit to make it known that he has received a part of it.

If he take a part of it, and deposit the remainder elsewhere; or neglect it, thinking that he will not be liable to make good the whole; in that case, the whole must be made good. MISRA.

When the deposit is lost by the depositary's fault, he shall make it good; but when it is lost by the fault of the person through whom it was deposited, then this person shall make it good.

XXVII.

CÁTYÁYANA:—What is lost by the fault of the depositary, is lost to him.

2. He by whose fault any thing is lost or taken away, shall be compelled to make it good, with interest, unless *it be lost* by the act of God or the king.

But even if the depositary have shown a *probable* cause of its destruction, if the thing deposited appear to have been lost by any fault on his part, other than neglect, he shall make it good.

The *Retnâcara*.

A man addressing some person, says, "let my property remain in deposit with thee;" he replies, "my house is infested by rats and other vermin, place it not there;" the other rejoins, "be it so, what can vermin do?" and he accordingly deposits the goods. It follows, that in that case there is no fault in the depositary, if it be lost by neglect. But if he place it out of the house, or in another place, and in consequence it be seized by thieves, or spoiled by rain; or if, from anger or some other motive, he cast it of his own accord into the water; or if he deliver it to the king, who causes his household effects to be sold on account of some fault; if the thing deposited be lost by these or other faults

on the part of the depositary, he shall make it good. This is intended by the first hemistich (XXVII).

When, addressing some person, a man says, "bail this grain to DÉVADATTA;" and he, going to DÉVADATTA, says, "this grain is bailed to thee, by CHAITRA, through me;" and DÉVADATTA answers, "place it in the house;" and he places the grain in the middle of the house, but in a damp spot; and the grain is destroyed by the damp: in this case, the grain shall be recovered from the messenger. This is intended by the second verse (XXII 2): for, otherwise, it would be superfluous. Thus, if the depositary be understood in the words "he by whose fault," the sense is the same as in the preceding hemistich; and if the depositor be understood, then the receiver and giver would be the same; it is therefore properly applied to an intermediate person: and, according to the *Dīpacālicā*, when the deposit is destroyed by the fault of the person who causes it to be placed, he shall make it good. But when the owner bails effects notwithstanding the depositary's objections, and those effects, being neglected, are lost, but without any other fault on the part of the depositary, in that case no blame shall be imputed to the depositary.

XXVIII.

CĀTYĀYANA:—If the depositor, though apprised of its danger, *nevertheless* bail the thing, and it be destroyed by any injury, the depositary shall not be compelled to make it good.

If the depositor know the loss of his effects to be probable, (having been forewarned by the depositary, that the king would force the house, and therefore he ought not to place his effects there;) if he nevertheless bail those effects, there is no fault in the depositary, should they be lost by any cause, whether it be the occurrence which was previously apprehended, or *some accident* which was not apprehended. In this exposition, the *Retnācara* and the rest concur.

Is this text applicable or not, when, in such a case, the deposit is lost by negligence? Here it is said, that the text does apply in

in the case of a loss occasioned *merely* by negligence, without any other fault: for another text (XXIV) *already* shows, that there is no fault in the bailee, if the deposit be lost without neglect or other *fault*; and it is declared, that the depositary is criminal, if it be lost by his fault. It cannot be said that the former text (XXIV) intends the case of a deposit lost, together with the goods of the bailee; but that this text (XXVIII) intends a deposit consumed by time, though not neglected, and without a concurrent loss of the bailee's own effects. For, according to CHANDÉS-
WARA, it is not limited to the case of the bailee's goods being lost with the deposit; 'the loss of his goods, every where mentioned, is intended as an exception to other faults also;' and the text (XXIV) is taken only in the sense *so* inferred: this corresponds with what CHANDÉS-
WARA has said in explaining another text (XXVII).

XXIX.

GÓTAMA :—The necessity of making good a deposit, a thing bailed for delivery to a third person, a pledge, a thing borrowed or hired, and the like, if destroyed by the fault of the bailee, shall not fall upon any of his heirs, if they were free from blame; but it falls on the bailee, by whose fault the thing is destroyed.

"Deposit," &c. in a general sense. Whatever has been mentioned by any Sage or Author as partaking of the nature of a deposit, must be understood. "Heirs;" sons, grandsons, and the rest. "Free from blame;" not in fault. Consequently, should the depositary die, the owner recovers the thing deposited from the heirs of the bailee, *if it be lost by their fault*: thus is the law settled. But if it be lost without any fault, by accident or the like, he does not recover it from the heirs. This exposition is founded on the gloss of the *Retnácara*.

Is not this gloss ("heirs;" sons, grandsons, and the rest) unmeaning? for the depositary himself is free from blame, if the deposit be lost without any fault on his part. It must be understood,

stood, that this text is intended to obviate the doubt, whether, in case of the depositary dying after having occasioned the loss of the deposit by his own fault, the owner may recover it from his sons, because it was lost by their father's fault : but if it be lost by their fault, it must be made good by them (XXVII 2).

SECT. II.—*On the Recovery of a Deposit.*

It has been said, that *the depositary* shall be compelled to make good a deposit destroyed by his fault ; shall he be compelled to make it good with, or without, interest ?

XXX.

VYĀSA :—For a thing voluntarily wasted, the bailee shall be forced to pay the price with interest ; for a thing neglected, the value only ; for a thing lost through *slight* inattention, something less.

When the owner, having bailed a thing, demands it at a distant time, and the depositary, having wasted it, cannot deliver it ; then a contest arising thereon, if it be proved that he has wasted the thing, he shall be compelled to make it good with interest. “ Wasted ” is not exclusively intended ; but any advantage which the depositary procures for himself *by the thing bailed*, is fully meant ; hence the sale and other embezzlement of the thing deposited, is comprehended in this precept.

XXXI.

VRIHASPATI :—Whatever depositary procures advantage for himself by the thing bailed, *without the*

the consent of the owner, shall be amerced by the king, and made to pay the price of that thing with interest.

Here also “without *the consent of the owner*” is determinately meant. Having procured advantage to himself by the thing bailed, without the consent of the owner, if he make it good in another mode, he may be exempted from the payment of interest, and from the fine, by the forbearance of the owner, and of the king. The *Retnâcara*.

The commentator's meaning is, that even if the thing bailed be wasted, the payment of interest and of a fine is not customary; but the value of the chattel only must be made good. Otherwise this text would be trivial, *because the punishment of an offender is a matter of course*.

The preceding text (XXX), attributed in the *Mitâcsharâ* to CÂTYÂYANA, is ascribed to VYÂSA by CHANDÉSWARA, MISRA, BHAVADÉVA, and others. The interest, according to MISRA, shall be the eightieth part *of the principal by the month*, as ordained by the law.

XXXII.

CÂTYÂYANA:—A deposit, the balance of interest, a commodity sold, and the price of a commodity purchased, not being paid after demand, shall bear interest at the rate of five in the hundred.

“If the debtor be a ‘*Sûdra*’ must be supplied, to reconcile it with the text, which directs interest at the rates of two and three in the hundred and so forth (Book I, V. xxix 2).

It is directed, that a thing voluntarily wasted shall bear interest: does interest commence from the day when the thing was deposited, from the day when it was wasted, or from the day when it was demanded? 1. To this it is answered, it shall bear interest after six months from the date of the deposit: for, the words “after three seasons” being repeated in this text (XXXI I) from the preceding text (Book I, V. lvi 1), it is proper to assume the

the date of the deposit, in answer to the question, from what date shall three seasons be counted? 2. Some hold, that a deposit, not delivered on demand, shall bear interest six months afterwards, because demand is suggested by the context, where MISRA directs interest at the rate of five *panas* in the hundred after six months. 3. Since the wasting of the thing deposited is the cause of its bearing interest, under the authority of the text (XXX), we hold it proper, that interest should commence (even earlier than six months) from the day when the thing was wasted; but the other text (XXXII), ordaining interest after six months, is applicable to the case where a fraudulent depositary, though the thing have not been wasted, refuses to deliver it on demand; like the price of a commodity purchased, and like a balance of interest, and so forth. What then shall be the rate of interest? Two in the hundred, and other rates ordained by the law; because those are in their nature legal rates, and because interest is so limited by the text of MENU (Book I, V. xlii): and the interest and amercement should be proportioned to the magnitude of the offence. But this does not coincide with the opinion of the author of the *Mitâcsharâ*; for he applies the text (XXXII) to a thing voluntarily wasted, and does not distinguish *payment of interest*, and exemption from interest, in cases where a thing deposited is lost by neglect, and so forth.

The text of VYĀSA (XXX), being placed under the head of Deposits Damaged, relates to such as are damaged by the use of them. Consequently, if a stone or the like, bailed without seal, be used for three or four days, it shall not be restored with interest: the payment of interest regards things damaged by the use of them.

XXXIII.

YĀJNYAWALCYA:—If the depositary, of his own accord, *without the consent of the owner*, use the thing deposited, he shall be amerced, and compelled to pay the price of the thing with interest.

“Of his own accord;” that is, without the assent of the owner. “Use the thing deposited;” employ it for his own purposes.

poses. Such a depositary shall be amerced. The fine not being specified, he shall be amerced in the value of the thing, like the depositary who does not deliver the thing on demand; and he shall be compelled to pay the price of the thing with interest.

“For a thing neglected, the value only,” (XXX); the depositary shall be compelled to pay the value only of a thing neglected, that is, of a thing lost by his negligence, such as disregard of it because it was another’s property: in this case, interest shall not be exacted. It must be remembered, that, according to the third opinion above mentioned, if it be not delivered on demand, it shall bear interest after six months; but the value only shall be required, if it be made good immediately after the demand.

XXXIV.

VRIHASPATI:—Should the bailee suffer the thing bailed to be destroyed by his negligence, while he keeps his own goods with very different care, or should he refuse to restore it on demand, he shall be compelled to pay *the value of it* with interest.

“By his negligence, while he keeps his own goods with very different care;” by neglect, after separating the thing bailed from his own effects. If the depositary, fraudulently removing the thing deposited, which was placed with his own goods, secure his own effects, but neglect the deposit; and the thing, being guarded by no one, but left any where unheeded, be consequently lost; in that case he shall pay interest by way of fine, in like manner as if it had been wasted: for the removal of that thing was a great offence. In this case, the payment of an equal fine to the king is proper; but it is not mentioned by any Sage.

“Or should he refuse to restore it on demand;” should he refuse or evade restoring the deposit, without making it known that the thing has been lost by neglect; (for example, if he say, “Am I thy servant, that thou shouldst deposit thy effects with me? I know not where thy goods were placed, nor by whom, nor what

what is become of them ;" or, " that thing was not bailed, but given to me :") in this case, it shall be made good with interest ; for his fault is great, in not making it known that the thing bailed has been lost. According to the third opinion, interest must be paid from the day the thing was lost ; in other instances, according to the nature of each case, interest commences after six months *and so forth*. Thus some lawyers reconcile it to the law, which directs the value *only* to be made good if the thing bailed be not restored on demand. Others hold, that if the thing deposited be not restored on demand, it shall be made good to the owner with interest, and a fine be paid to the king equal to the value of that thing : thus establishing, by implication, the consistency of all the texts with each other. Some reconcile them by directing the value to be made good with or without interest, according to the qualities of the depositary.

The Mitâcsharâ explains " something less" (XXX) a fourth less. The meaning is, that, if the thing be inadvertently lost, (having been neglected through forgetfulness, long after it was received in deposit,) the fault being small, three fourths only of its value shall be made good.

XXXV.

YÁJNYAWALCYA :—If a *sealed deposit* be lost, *even by the act of God or the king*, after it has been demanded and not restored, *the bailee* shall be compelled to pay the value of the thing, and an equal amercement.

If it have been demanded, (required by the bailer,) and not restored by the bailee ; should a loss of the deposit afterwards happen by the act of God or of the king and so forth, effects of equal value must in that case be given, and a fine of the same amount be paid to the king.

The *Mitâcsharâ*, *Retnâcara*, and the rest, concur in this exposition. The author of the *Mitâcsharâ* inserts this hemistich as an exception to a text quoted in the preceding section (XXV). Here the thing is made good without interest, because he must make

good, out of his own effects, the thing bailed, which has been lost by accident. This is not inconsistent with the opinion of others, *grounded on the following text*:

XXXVI.

NÁREDA:—He who restores not a deposit to the bailer, though required by him, shall be fined, to the use of the king; and, if it be *afterwards* lost, shall pay its full value.

2. And he who procures advantage for himself *by the thing bailed*, without the consent of the bailer, shall be amerced, and be liable to pay the value of the thing, with interest.

They hold that a fine is here directed, if the deposit be fraudulently withheld, though not lost; and the fine shall be equal to the value of the thing, as in the preceding cases, and as intimated by the sequel of the text: the deposit must of course be restored; but it shall be restored with interest, on the concurrent import of the text of VRĪHASPATI.

If a thing not restored on demand be lost, without any fault on the part of the depositary, by the act of GOD or the king, its value shall be made good to the owner without interest, as has been already mentioned almost *in as many words*. A certain author says, if a thing be merely refused when demanded, it shall be made good with interest; but if it be also lost by accident, its value shall be paid without interest, and a fine shall be paid to the king. Of these opinions, whichever seems best supported may be adopted.

The second verse (XXXVI 2) has been in a manner already expounded; for it corresponds with the text of VRĪHASPATI (XXXI): and the amercement shall be equal to the value of the thing; for what is affirmed in one case, is applicable to other similar cases.

XXXVII.

XXXVII.

MENU :—He who restores not a thing really deposited, and he who demands what he never bailed, shall both be punished as thieves, or pay a fine equal to the value of the thing claimed.

In a suit where a deposit is alleged by one party and denied by the other, if it be proved that the thing was in fact bailed to him, the depositary shall be punished as a thief; according to the quantity and nature of the thing proved to have been bailed, he shall be punished as a thief, by death, or confiscation, or other punishment ordained for theft of such things in certain quantities: and such shall be the punishment, even though the deposit be merely denied. But if the depositary be *in general* virtuous, the legislator directs, that he shall only pay a fine equal to the value of the thing: consequently, he shall not in this case be punished by death, or *confiscation*, or the like. The same must be understood of the claimant, according to the circumstances of the case, if it be proved that no deposit was made. **CHANDÉS-WARA** holds, that they shall be punished as thieves, if the suit regard valuable things; and pay a fine equal to the value of the thing, in the case of a trifling demand. **CULLÚCABHATTA** says, ‘they shall be punished as thieves, if gold, gems, pearls or the like be demanded; or, in the case of a trifling demand, shall pay a fine equal to the value of the thing claimed.’ But a *Bráhmāna*, he adds, whether virtuous or not, who withholds a thing deposited, or demands what he never bailed, is not liable to the punishment of death and the like.

XXXVIII.

MENU :—The king should compel a fraudulent depositary, without any distinction between a deposit under seal or open, to pay a fine equal to its value.

And that if the *Bráhmāna* be free from vice; but if he be
vicious,

vicious, he shall pay a fine equal to double its value, as directed in a text which will be quoted from the *Matsya purāna*. Such is the modern interpretation. CHANDÉSWARA remarks: Punishment similar to that of theft is denied by the second text (XXXVIII); and the exaction of a fine equal to the value of the thing is positively ordained, whether the deposit be of considerable or trifling value; and that is to be understood in the case of a *Brāhmaṇa* being the depositary. "Without any distinction between a deposit under seal or open:" from this expression it appears, that all that which has been propounded respecting the non-delivery of open deposits and so forth, is also applicable to the non-delivery of a sealed deposit, the unauthorized use of it, and so forth. CULLÚCABHATTA says, let the king amerce a fraudulent depositary in a sum equal to the value of the thing bailed: from the parity of the cases, the text does not repeat, that he who demands what he never bailed shall also be fined. If the offence be great, it might appear from the preceding text, that corporal punishment is to be inflicted on any other than a *Brāhmaṇa*: this text denies it, for the law directs a pecuniary fine. Nor is the preceding text unmeaning: for this text applies to a first and slight offence; and the preceding text intimates a pecuniary fine for a second offence, that is the highest amercement ordained in cases of theft.

XXXIX.

MENU:—That man who by false pretences gets into his hands the goods of another, shall, together with his accomplices, be punished by various degrees of whipping or mutilation, or even by death.

If any man, except a creditor or a *Brāhmaṇa*, by fraud or by violence, and causing much pain and so forth, (for "pretence" is expressed in the plural number,) get into his hands the goods of another, whether they be things bailed or otherwise, (for the precept is general;) he shall, together with his accomplices, be punished by various degrees of corporal pains short of death, or even by death; that is, by a blow with the hand or with sandals,

or by cutting off the hand or foot, or even beheading, according to the value of the goods, the qualities of the man, his class, and the like. First taking the goods, afterwards behead him, or otherwise punish him.

“By false pretences;” by frauds of various kinds. “His accomplices;” those who have assisted him in getting into his hands the goods of another. “Publicly;” in an open place.

CHANDÉSWARA.

He who obtains the goods of another by fraud, under a false pretence, (telling him, “the king is angry with thee, I will save thee, give me some thing;” and thus receiving, as a gratuity, wealth, a female *slave*, or the like;) shall, together with his accomplices, be punished by the king, in the presence of many people, by various degrees of punishment, such as mutilation of hand or foot, beheading, and the rest.

CULLÚCABHATTA.

XL.

Matsya purāna:—He who restores not a thing really deposited, and he who demands what he never bailed, shall both be punished as thieves, or shall pay a fine equal to double the value of the thing claimed.

This text is reconciled by CHANDÉSWARA to the text of MENU (XXXVII), by directing, that the fine shall be equal to the value, or to double the value of the thing claimed, according to the good or bad general conduct of the person to be punished. Any other than a *Brāhmana*, if vicious, shall be punished as a thief; if virtuous, shall pay a fine equal to the value of the thing: but a *Brāhmana*, if vicious, shall pay a fine equal to double the value of the thing; if free from vice, a fine equal to the value only. Any other than a *Brāhmana*, who, by false pretences, gets into his hands the goods of another, shall receive corporal punishment proportionate to the case; but a *Brāhmana* shall incur the pecuniary punishment, substituted for corporal punishment, as declared under the title of Theft: such is the modern interpretation.

If

If the goods of another be obtained by false pretences, various degrees of corporal punishment shall be inflicted on the offenders.

The fraudulent depositary shall be punished as a thief, if the deposit consist of gold, gems, pearls, or the like. In the case of a trifling demand, the fine shall be equal to the value of the thing, if it concern any other than a *Bráhmāna*, and his general conduct be good ; but equal to double the value, if his morals be not good.

A *Bráhmāna* shall never be punished like a thief, whether the value of the deposit withheld be considerable or trifling, nor if the thing have been obtained under false pretences, but he shall pay a fine equal to its value. Such is the mode according to the opinion of CHANDÉSWARA. But, according to CULLÚCABHATTA, any other than a *Bráhmāna*, who obtains gold, gems, pearls or the like by false pretences, or withholds a deposit consisting of such valuable effects, for a second offence shall be punished as a thief ; but if the thing be of trifling value, he shall pay a fine equal to its worth. It certainly follows, that in all cases a *Bráhmāna* shall pay the value of the thing. Or, a fine equal to double the value of the thing (XL), may be applicable to the case of a *Bráhmāna*, on a second offence, if gold or pearls or the like be demanded ; but the fine shall be equal to the value only for a first offence, whoever be the person, or whatever be the thing.

MENU mentions incidentally punishment by death and so forth, in the case of a man who obtains the goods of another by false pretences.

Some hold, that he who restores not a deposit, or who embezzles it, and he who falsely claims a deposit, and thus obtains the goods of another by false pretences, shall be punished as thieves, if they be vicious and devoid of all virtue : but if neither vicious nor virtuous, or both vicious and virtuous in equal degree, they shall be amerced in double the value of the thing ; and if virtuous, and not vicious, in the value only. By the term “not restoring a deposit,” is intended imposition by artful discourse, not the concealment of the deposit ; but embezzlement is the fraudulent withholding of the deposit : the fraudulent withholder covetously desires to appropriate the thing by false assertions ; he is described by CULLÚCABHATTA. Since corporal punishment cannot be inflicted on a *Bráhmāna*, the punishment substituted for it, under the title of Theft, must be understood in

the expression "punished as thieves." In the second text, quoted from MENU (XXXVIII), "shall be punished as thieves," must be fetched from the preceding text (XXXVII): and the latter text (XXXIX) gives some detail on the punishment of thieves. The texts of other Sages (XXXVI &c.), intimating a fine equal to the value of the thing, relate to the case of a man who is in general virtuous and free from *all* vice. Of the various ancient and modern opinions, one is to be selected; many have been mentioned for discussion.

CÁTYÁYANA propounds a distinction on bailments for a stipulated time.

XLI.

CÁTYÁYANA:—A deposit (*upanid'hi*) shall be recovered at the time stipulated; but let the *owner* leave it until the period expire: when that does expire, if the depositary restore not the thing, he shall be compelled to pay double the fine.

"Recovered" by the bailer, "at the stipulated time;" at the fixed time for receiving it back. "Until the period expire;" whilst less than that time is elapsed. Hence he shall recover it when the period is elapsed, and not before. But a depositary, not restoring the deposit when the full period is expired, shall be chastized. The *Retnâcara*.

Whatever fine, for whatever kind of property, has been declared in the case of a thing bailed without stipulating a period, double that fine shall, on the authority of the law, be paid by him who does not restore, at the stipulated time, a thing of a similar kind which had been bailed for time. It follows, that, in the case where the fine is ordained at double the value of the thing bailed, he shall pay four times the value if it was bailed for time.

Simple men hold, that "double the fine" intends double the value including the fine: the fine shall be equal to the value of the thing, and the value shall be paid to the owner. This supposes a case where the depositary is in general virtuous: and the text intimates, that there is no fine if a thing bailed for time be refused before the time expire.

But

But others interpret the text, 'when a period is not stipulated,' instead of "when the period does expire." If the depositary restore not the thing on demand, he shall pay double the fine, that is, double the value including the fine; and they apply this hemistich to the case of a thing bailed for no stipulated time, provided the depositary be in general virtuous. Others again explain "double the fine," double the sum as a fine: consequently the depositary shall pay double the value of the thing by way of fine; and they hold, that this is consistent with the opinion delivered in the *Retnâcara*, where this text is considered as relating to the same subject with the text of the *Matsya purâna*. This opinion, in part comprehending that of others, seems satisfactory.

"A deposit" (*upanid'hi*) is here employed in a general sense (V. viii).

XLII.

CĀTYĀYANA:—He who, having received a loan for use, does not return it, though required *by the owner*, shall be compelled to restore it by harsh reproof, or shall be amerced if he *still* refuse to restore it.

Having borrowed ornaments for decoration, an awning or the like for a company, and so forth, if he do not restore them, though demanded by the owner, the king, reproaching him in opprobrious terms, shall require him to return them: if even then he restore them not, he shall be amerced; and the fine may be equal to the value of the thing, as before directed. For CĀTYĀYANA applies the law respecting bailments to loans for use and the like, declaring, that "these rules are propounded for all deposits (*upanid'hi*)." But the additional text intimates a distinction, which will be mentioned by and by (LI).

It must be considered, that if a creditor, having artfully obtained from his debtor an awning or the like, refuse to restore it, employing legal deceit, as authorized by VRĪHASPATI, for the recovery of the debt, he is not to be reproached, but shall be made to give credit for it in payment of the debt; and that supposes the period for which the loan was made to have expired, and the debtor

debtor to have neglected, or to be unable to pay the debt. But if the period have not expired, he cannot employ artifice. And further the same rule is applicable to deposits and the like, according to circumstances.

A distinction is mentioned in the case of loans for use:

XLIII.

CÁTYÁYANA:—When it is borrowed for a particular purpose, or a specified time, if it be demanded when the purpose is only half accomplished, it shall not be recovered, nor shall the borrower be compelled to restore it.

If a man have borrowed an awning for the company entertained at the nuptials of his son, the owner cannot take it back on the day of the nuptials, after one watch of the day is passed; for the purpose is only accomplished in part. But it may be taken if the purpose have been fulfilled: it certainly cannot be exacted if any part of the purpose be yet unaccomplished. So, if ornaments or the like be borrowed to be worn a month, the ornaments cannot be taken back before the end of the month: and the wearer of the things borrowed shall neither be amerced, nor reproached.

A further distinction is mentioned:

XLIV.

CÁTYÁYANA:—But where the owner's purpose would be disappointed from the want of that thing, the borrower may be compelled to restore it before the time stipulated, even though his purpose be only accomplished in part.

“Where the owner's purpose would be disappointed” (*vipatiti*); where his business would go to ruin, according to the literal sense of the verb *pad*, move. Consequently, if the owner's business would be exposed to disappointment for want of that thing,

it may be taken back by him before the period expire, even though the borrower's purpose be only half fulfilled; meaning generally, though it be not fully accomplished. If the borrower refuse to restore it immediately, he may be fined or reproached, according to circumstances.

It must be understood, that all these rules provide against fraud. Therefore, when a thing borrowed to be used a month, is sent to another province, and the owner happens to need the thing, but it cannot be brought back, the borrower shall not be fined or reproached, though the owner's purpose be disappointed: but the borrower must mention, at the time of borrowing the thing, that he intends to send it to another province. This must be considered as deducible from plain reasoning.

What is to be done in a suit wherein a deposit is alleged by one party and denied by the other? There must be a trial by ordeal (XV).

"A deposit is declared to be of two sorts." A deposit authenticated by a writing is not distinguished by any Sage. This meaning is there denoted: without a purpose of his own, a depositary does not execute a writing; but the depositor causes the bailment to be attested. Why is it said, under the title of Loans, that a written acknowledgement of a pledge shall be given by the creditor to the debtor? The answer is, as a loan is made from a desire of gain, so a writing is executed by the creditor from a wish to confer a favour while he takes a pledge, by furnishing grounds for confidence that the thing shall be received back. But some admit a deposit authenticated by a written contract.

"It must be restored in the condition and manner in which it was bailed" (V. xv): the deposit, whether sealed or open, attested or unattested, must be received back in the same manner in which it was bailed. If altered, or denied, there must be a trial by ordeal: without it, the deposit is not established on the simple assertion of the plaintiff.

Two modes of proof are declared for the two sorts of deposit; attested, and privately bailed.

XLV.

VRĪHASPATI:—Him who is convicted by the evidence

dence of witnesses, or by ordeal, of secreting a deposit received, let the king compel to restore the deposit, and to pay a fine equal to its value.

If an attested deposit be denied by the depositary, let the king, ascertaining it by the evidence of competent witnesses, compel him to restore it; and, ascertaining by ordeal a thing privately bailed, let him compel the depositary to restore it. On the authority of the text of YÁJNYAWALCYA, ("on failure of each of these, ordeal is ordained in each case,") proof by ordeal is admitted by the author of the *Mitácshará*, on failure of evidence.

XLVI.

MENU :—The king must decide the questions, after friendly admonition, without having recourse to artifice; for, the honest disposition of the man being proved, the judge must proceed with mildness.

Omitting reproaches and artifice or the like, such as bailing other effects to him, let the king decide the question after friendly admonition, and not hastily direct a trial by ordeal; or, considering the character of the man, and knowing his honest disposition, let the judge proceed with mildness. The text, thus expounded by CULLÚCABHATTA, forbids hasty recourse to ordeal. Therefore recourse must be had to sensible proofs.

XLVII.

MENU :—He who restores not to the depositor, on his request, what has been deposited, may first be tried by the judge *in the following manner*, the depositor himself being absent.

2. On failure of witnesses, let the judge actually deposit gold, or *precious things*, with the defendant,
by

by the artful contrivance of spies, who have passed the age of childhood, and whose persons are engaging.

3. Should the defendant restore that deposit in the manner and shape in which it was bailed *by the spies*, there is nothing in his hands for which others can justly accuse him:
4. But if he restore not the gold, *or precious things*, as he ought, to those emissaries, let him be apprehended and compelled to pay the value of both deposits: this is a settled rule.

If the depositary do not restore the thing, though required by the depositor, let him be sued before the king. Let the judge immediately demand it of the depositary with mild expostulation, without threats. If the depositary, apprehending the disgrace of a fine, or of corporal punishment, which it is the king's duty to inflict, and reflecting that he cannot conceal the fact, acknowledge the deposit, he shall be compelled to restore it; and in this case there is no ordinance exempting him from a fine. But if he do not acknowledge the deposit, let it be tried by oral evidence: this appears from the mention of "failure of witnesses." If there be no witnesses, (the deposit having been privately made, or the witnesses being dead,) the legislator directs, "let the judge actually deposit gold, *or precious things*, with the defendant, by the artful contrivance of spies, apt in detecting secret practices, who are neither very old nor very young, and whose persons are engaging:" meaning generally spies qualified for the employment. By artful contrivance or stratagem, actually depositing gold belonging to himself, let him try the matter: the text should be so supplied. The legislator subjoins the test: should the defendant's veracity be unimpeached in every respect, the deposit being kept *and restored* as it was bailed, he must be acquitted of the offence for which he is accused by the claimant: because, were he dishonest, he would secrete the thing bailed by disguised emissaries. Let the judge also try the honesty of the supposed depositor; and if both appear honest, let him have recourse to some other

other mode, ordeal or the like : such is the induction of common sense. “ But if he restore not the gold,” let him be compelled, by harsh reproof, to make good both sorts of deposit, sealed and opened * ; and the reproaches and punishment shall be proportioned to the trouble he has occasioned. The *Retnâcara* and the rest concur in this interpretation.

Here a doubt may occur, should the supposed depositary, or depositor, be acquainted with the rules of judicial procedure. If the man do not act dishonestly in regard to the thing bailed by emissaries, though he be dishonest in regard to the deposit claimed, his practices cannot easily be detected. For this purpose much labour must be employed. Let the judge, night and day, place spies in disguise, on all sides of him, and near the walls of his house, that it may be known, by means of such emissaries, what conversation he holds with his intimate friends at various times, and what his occupations are : the mode mentioned by the Sage is merely an example †.

CHANDÉSWARA

* The translation of the text, as given in the *Institutes of Hindu Law*, chap. viii, v. 184, has been followed in preference to this interpretation.

† The compiler takes occasion to relate a popular tale.—A soldier, intending to travel to a foreign country, and wishing to place in other hands his property, consisting of gold and silver, put it into a jar of oil, which he delivered into the hands of an oilman, saying, “ keep this jar of oil for me.” The oilman, suspecting, from its great weight, that the vessel contained some metallic substance, took out the gold and silver, and filled up the vessel with oil. The soldier returning, received back the jar of oil, and missing the gold and silver, demanded his property from the oilman. He replied, “ this is the very jar of oil which was intrusted to me ; take it away : I know not what it contained.” The suit was carried before the king, who, after much investigation, told the oilman, “ I will give an answer, after making trial of your honesty ; let this wooden chest remain in your house one night ; on your bringing it back in the morning, the question shall be decided.” Placing in it a sensible and learned man furnished with paper, pen, and ink, he delivered to the oilman an old wooden chest, in the lid of which many holes were bored. The oilman having received it, at night, in conversation with his wife, said, “ this king tries my honesty, by depositing a thing of his own with me ; am I such a thief, that, embezzling the king’s deposit, I should incur punishment ? Obtaining the king’s confidence by restoring the chest with its contents in the morning, and cheating the soldier, I shall live in affluence upon the valuable property gained from him.” The concealed spy wrote down the whole of this and the rest of their conversation. In the morning, the oilman being brought before him, together with the chest, the king, informed of the whole circumstance by the notes taken down by the man who was concealed in the chest, inflicted due punishment on the oilman, and compelled him to restore the effects to the soldier.

CHANDÉSWARA expounds “artful contrivance,” stratagem. He who interrogates (*prich’hati*), is the interrogator (*prái*). He who pronounces (*vivañti*), is the pronouncer (*vivác*): first the judge (*prád’vivác*) is interrogator, next pronouncer of judgment; an apposition in the form called *carmad’háraya*, as in the example, ‘bathed and anointed.’ Having first inquired all circumstances from the plaintiff, the judge (*prád’vivác*) himself pronounces what is proper: he is an officer of the king.

If it be alleged by the depositor, that a hundred *suvernás* were bailed, and it be proved by witnesses, or by any other popular proof, or by ordeal, that fifty *suvernás* were bailed, the following text shows what is to be done by the king in that case:

XLVIII.

MENU:—Regularly, a deposit should be produced, the same in kind and quantity as it was bailed, by the same and to the same person by whom and from whom it was received, and before the same company who were witnesses to the deposit: he who mistakes a deposit, ought to be fined.

The depositor who claims more, and the depositary who acknowledges less than was deposited, ought to be fined. Such is the meaning according to the *Retnácara*; and in this CULLÚCABHATTA concurs. “Before the same company” is mentioned to denote witnesses, but is merely an example: consequently, the rule is the same if the ascertainment be made by other popular proof, or by ordeal. He shall pay a fine equal to that part for which a falsehood was asserted; not equal to the whole of the effects claimed, nor to the value of the thing *actually* deposited; for the offence is less.

XLIX.

MENU:—Such is the mode of ascertaining the right in all these cases of a deposit: in the case of a deposit

deposit sealed up, the bailee shall incur no censure on the re-delivery, unless he have *altered the seal*, or taken out something.

He shall incur no censure if he have taken out nothing from a sealed deposit, but he shall incur censure if he have taken out any thing; and, if he take out any thing from an open deposit, he shall incur no censure if he afterwards restore it.

The *Retnācara*.

We say, such is the mode of ascertaining the right and recovering the deposit, (namely the mode above mentioned XLVII 2,) in all these cases of deposit, (meaning generally all deposits, loans for use, and the like :) consequently, in the case of any deposit, or loan for use, if the depositary acknowledge the receipt of silver, and the depositor allege a bailment of gold; or if the contest regard the quantity; it shall be tried by the evidence of witnesses, by artifice, or the like, as directed by the former text (XLVII 2). But, in the case of a deposit sealed up, if it be proved that the depositary did not break the seal, and after taking out something seal it up again, he shall incur no censure or disgrace. Herein CULLÚCABHATTA concurs*.

MENU :

* The compiler takes occasion to insert in his text another popular tale.—A rich man placed in the house of a friend two jars filled with effects, having closed the mouth of each jar with lac, on which his own seal was impressed. Some time after his death, his son, inspecting his father's notes of his income and expenditure, and of the disposal of his property, and finding a note of those two jars, claimed them: and the depositary accordingly restored them. The owner's son, opening both vessels, found gold coins in one, and pieces of iron in the other. Upon this he addressed the depositary: "Were pieces of iron intrusted to thee by my father? restore to me the gold coins." The other replied, "both jars remain as they were marked with thy father's seal; I know nothing of their contents." The dispute being referred to arbitrators, these hesitated on seeing the lac, on which was the impression of his father's seal, broken into pieces; and the depositor's son observed, "this seal was made by some artist, not by my father." After reflection, the arbitrators weighed the pieces of iron and the gold coins, and finding the weight of both equal, and seeing, in the owner's notes of the disposal of his effects, that two jars were mentioned as placed in the depositary's house, they determined that the pieces of iron were probably placed to verify the weight of the gold: and thus the parties were reconciled. Therefore, adds the compiler, in the case of a sealed deposit, the seal should be broken before witnesses, or the thing should be opened, *on re-delivery*, without breaking the seal into pieces.

L.

MENU :—Thus let the king decide causes concerning a deposit, or a friendly loan for use, without showing rigour to the depositary.

In the mode before directed, without showing rigour to the supposed depositary. So the *Retnâcara*. The gloss of CULLÚ-CABHATTA is similar.

By this it is expressed, that, in ascertaining the right in the case of a deposit, rigour and deceit, and other expedients propounded by VRĪHASPATI, shall not be employed against the supposed depositary, as in ascertaining the right and so forth in cases of debt. If it cannot be ascertained by popular proof, such as the evidence of witnesses and the like, it shall be tried by ordeal (XIII). Proof by ordeal is directed for both parties, the supposed depositor and the supposed depositary : so the text is explained in the *Retnâcara*. Consequently, in a suit wherein one party alleges a deposit which the other denies, ordeal is ordained to determine the right : to answer the question, whether the supposed depositor or depositary shall submit to ordeal, the text directs both parties, *that is either party*. In this case the rule is, that ordeal shall be performed by whichever party appears to surpass the other in honesty ; it is not positively required that ordeal be performed by the party accused. In cases of bailment for delivery, loans for use, and the like, the trial by ordeal on failure of evidence, the decision, and the amercement, shall *in general* be the same as in the case of any other deposit (XI) : but a distinct fine is mentioned in the case of a loan for use.

LI.

Matsya purâna : — He who, having received a loan for use, does not restore it as he ought, shall be compelled to restore it by harsh reproof, or shall be fined in the first amercement.

It is here denoted, according to CHANDÉSWARA, that, if a loan
for

for use be not restored, the fine shall not be equal to the value of the thing, but equal to the first amercement; for, no where otherwise explaining the text of CĀTYĀYANA (XLII), he cites this text, which directs the first amercement, immediately after the text of CĀTYĀYANA.

The reconciling of these texts, by discriminating the degrees of virtue in the depositary, is proper, as well as the texts of several Sages, which direct that a man who embezzles a deposit shall be punished like a thief, or pay a fine equal to the value of the thing, and the like. As the law of deposits in general is fitly extended to loans for use, and the first amercement is in some cases the punishment of a thief, we hold that this text refers to those cases. The first amercement is propounded by MENU: "now two hundred and fifty *panas* are declared to be the first or lowest amercement;" and it has been often explained.

As a deposit, whether sealed or open, may not be re-delivered to sons or the rest, so a loan for use may not be re-delivered to them, while the owner lives: why should it be otherwise? But with the owners consent it may be delivered to sons and the rest, and even to a stranger.

LII.

VRĪHASPATI:—He offends not if he deliver a thing borrowed for use *to another person*, with the consent of the owner.

Supplied from the gloss of the *Retnācara*: and common sense extends this very rule to open deposits and the rest. But the owner's consent should be attested; otherwise, a subsequent contest would not be obviated.

If the thing borrowed for use be lost by accident, after the expiration of the period for which it was borrowed, an equivalent must be given: for the case is similar to that of a bailment with an artist.

LIII.

CĀTYĀYANA:—If the artist keep the thing bailed, after

after the time agreed on for working it *into ornaments and the like*, he shall be forced to pay its value, even though it be destroyed by the act of God.

2. What is destroyed by his own act is lost to the hired *artist*, and shall be made good even earlier than the time stipulated; but if he have tendered it, it is lost to the owner who did not accept it.

“The time agreed on;” the number of days appointed as the period *for working the thing bailed into ornaments or the like*. “The thing bailed;” the bailment with an artist. After the time for which it was received; that is, received on a promise to deliver ornaments at the expiration of ten days, *or other similar promise*. If the artist keep the thing after that time, beyond the stipulated period, he shall be forced to make it good, even though it be destroyed by the act of God or of the king. Such is the meaning of the first text. What is destroyed by an act contrary to the owner’s requisition, shall be made good to the owner by the hired *artist* even earlier than the stipulated time; but if he tender the thing finished in the mode directed, and the owner do not accept it, and it be afterwards destroyed by the act of God, it shall not be made good to the owner by the hired *artist*. The *Retnācara*.

The meaning of this gloss is, that, where ornaments or the like are intrusted to an artist, for repair; in that case, if the artist, from his own conceit, without the assent of the owner, attempt to remake the unbroken parts; and the ornaments, happening to be old, are destroyed; the artist shall pay the value, or deliver an equivalent to the owner, even earlier than the time agreed on for repairing the ornaments.

Others, interpreting “hired” to mean in this place artist, and reading “in the case of a thing destroyed by his act,” explain “act,” work different from that directed by the owner, and supply the words “*bailed to an artist* :” and the interpretation is this: “in the case of a thing bailed to an artist, and injured by his acting inconsistently with the owner’s directions, the artist shall be forced to pay its value;” for this is inferred from what preceded. Consequently, if a part, however small, of the thing in question

question be broken by working on the part directed by the owner, it must be restored to its former condition ; that is, the loss falls on the artist.

The last hemistich of the *second* verse conveys this sense : if the artist, having finished the work on those parts for which the thing was intrusted to him, tender it to the owner, and he do not receive it, saying, "let it remain for the present," or desiring the work to be done in another manner, it is the owner's loss ; that is, it shall not be made good by the artist. But if the artist, agreeing to do the work in another manner, fixed a time, then, should that agreement be infringed, the fault is his.

Should it be contested by the owner, that he had directed different work ; and by the artist, that the very work directed was performed : in this case, the artist, even though he had tendered the thing, shall be compelled to pay its value if it be proved that different work had been directed, but not otherwise. And in every case he shall be forced to pay its value, if he had not tendered it.

Here learn incidentally what is to be done by the owner. In a case where the form of the work is disputed, let him first receive his own chattel, and afterwards contest the matter at the time of paying the artist's wages. If the artist will not deliver the thing without receiving his wages, it is no tender ; in this case, witnesses should be taken. When the cause is tried at a subsequent time, the right of one party being ascertained by evidence or by ordeal, whoever is cast in the suit, the loss shall be his, even though the thing have been lost by accident. If the wages have been already paid, or it be suspected that the thing has been changed, let the owner instantly apply to the king or his officer, or take witnesses, as above mentioned.

This and other points should be understood in the case of a thing seized by the king or the like, as well as in the case of a thing lost by the act of God : and the same also, according to circumstances, if gold, silver, or the like, be bailed for working into new ornaments.

LIV.

VRIHASPATI:—If the loss be *occasioned* by the defects of the thing bailed, the artist shall not be compelled

compelled to make it good ; but if the loss happen by the artist's fault, he shall be compelled to make good what was intrusted to him for repair, *or for work.*

In the case of a loss caused by the defects of the thing bailed, (if it be unfit to bear the heat of the fire, or operation of cutting and hammering, in consequence of its being very old,) there is no fault in the artist : for example ; where a gun is to be repaired of which the wood or the iron is found too weak, in consequence of its being very old. Otherwise, it is the artist's fault if it be destroyed by a pin driven through it, or the like : for example, if the gun be broken, where the wood and iron are joined, by a stroke of a hammer in a wrong place : and so in other cases.

LV.

VRIHASPATI:—If the property of another, bailed by the mode called *nyāsa* and the rest, be consumed, or neglected and lost even without design, the bailee himself is the man who must make them good.

Not his son, wife, or other heir. But if lost by the fault of the heir, he shall be compelled to make it good ; so the text is explained in the *Retnācara*.

Since a deposit, consumed by the depositary, is equal to a debt, it ought to be recovered from the son or other heir : but this distinction is not mentioned by any Sage ; and it has only been so settled by authors. If the deposit be lost by the depositary, it shall not be recovered from his son or other heir ; but if lost by his son or other heir, while the depositary is alive, it shall be recovered from that heir : or it may be recovered from the father, since the son's loss may be admitted to be the father's loss, in the same manner as the law directs (Ch. IV, v. 56), that the gain made by a son before partition is the father's. If it be destroyed by a stranger, it is considered as the act of God : and the thing

shall not be recovered from the depositary, but from that stranger. This is to be inferred from common sense, and from the text of **CÁTYÁYANA** (XXVII 2).

Should the depositary lend to another the thing bailed, what is the rule in that case? It is answered, If he lend it by consent of the owner, the gain and the loss are the depositor's: and this is controverted by none. He ought not to lend it, without the owner's consent: but if he do lend it inadvertently, the gain is the owner's; for he only has property in the thing; and the depositary, like a box or the like, is merely the holder of it. If the loan be lost by the death or insolvency of the debtor, the deposit must be made good by the depositary; since it was lost by the fault committed by him in lending it. Neither a gift, a sale, nor other alienation by the depositary, is valid, as will be mentioned under their respective titles. Thus may the law be concisely stated.

According to the opinion of those who admit a thief's property in the thing stolen, the bailment of effects stolen is valid. *Let the reader draw his own inferences on this and other topicks.*

CHAP. II.

ON

SALE WITHOUT OWNERSHIP.

SECT. I.—*On the Avoidance of Sale without Ownership.*

I.

VRIHASPATI:—After bailments, sale without ownership has been propounded by BHRĪGU: listen attentively to that law, which I promulge, together with the particulars *regarding the production of the seller, and the justification of the buyer.*

If the depositary sell the thing bailed, what shall be the consequence? In answer to this question, the law on sale without ownership is adduced. To this *order of promulgation*, BHRĪGU also assents. “Together with the particulars” relative to the production of the seller, the justification of the buyer, and so forth. Under this title he first defines sale without ownership.

II.

VRIHASPATI:—He who clandestinely sells an open deposit, a thing bailed for delivery, a sealed deposit, effects stolen, a pledge, or a thing borrowed

rowed for use, *or bailed to an artist, or the like* is considered as *selling* without ownership.

“Clandestinely ;” in secret.

The *Retnàcara*.

A chattel belonging to the man himself, delivered to another without transferring the property, is a deposit. When one intrusts his own effects to another, through the intervention of a third, the chattel so intrusted to an intermediate person is a deposit for delivery. All this must be understood as already explained. A thing intrusted under seal is a sealed deposit: both sorts are mentioned, as a priest and a mendicant *are distinguished*. “Stolen ;” seized by thieves. “A pledge ;” a thing hypothecated. “A thing borrowed for use ;” ornaments or the like asked and obtained for decoration and so forth. This is general, comprehending bailments with artists and so forth. He by whom such a thing is sold, is a non-owner. Such is the meaning of the text. Consequently the sale effected by him is sale without ownership. This must be understood as the import of the text ; otherwise, the establishing of a technical sense for the word *aswāmi* (non-owner) would be superfluous, since any other than the owner, whether a depositary or not a depositary, whether a seller or not a seller, has no ownership. But now there is no difficulty in explaining the term “non-owner,” as employed to denote sale without ownership.

III.

NÁREDA:—When a thing bailed, or the goods of another lost *by him* and found *by a stranger*, or effects stolen, are clandestinely sold, it must be considered as a sale without ownership.

The intrusting of one's own effects to another is bailment, as defined by NÁREDA. It comprehends loans for use and the rest, conformably with the sense of the verb *nihcshép*, bail or in trust ; the law of bailments having been extended to loans for use (Chap. I. v. 3 & 11 ;) for there is no difficulty in extending the laws promulged under the title of Sale without Ownership to these

these trusts, by the comprehensive sense of the pronoun "it." "Lost;" missed by the owner. The text must be so supplied. Some person travelling on a road, drops a thing, which is not recovered though diligently sought; in such cases, the thing is lost, but not abandoned by the owner: consequently it is not a waif. When that thing is found and sold by any person, it is sale without ownership: and so when a thing is sold which had been stolen, or taken by fraud or force, in the day or night, from the owner's house, without his consent.

The relative (III) belongs to the action: consequently that sale which is made by a non-owner, is a sale without ownership; the term "*sale*," being taken in the neuter sense. Or the relative belongs in construction to the goods of another which are sold: consequently that chattel, appertaining to another, which is *thus* sold, is a sale, or thing sold, without ownership; the word "*sale*" being taken in the passive sense: and many so explain the text.

IV.

VYĀSA:—When the goods of another are sold in the owner's absence, *whether they had been* borrowed for use, bailed for delivery, deposited under seal, or stolen, it is a sale without ownership.

In this text the pronoun stands in the masculine gender, because sale is masculine; as in a former text concerning secret bailments (Chap. I, v. 6) where neither the thing nor the act of depositing it, which might be intended by the pronoun, is masculine, but the word bailment (*nyāsa*) only is masculine. Any property of another, which is sold in the absence of the owner, whether it had been borrowed for use, bailed for delivery, or secretly deposited; or the property of another seized or stolen, which is thus sold, is a sale, or thing sold without ownership; but according to a former opinion, the sale of the chattel which is thus sold, though it belong to another, is sale without ownership. The difference in the construction of the text arises on the word "it" referred to the sale, or to the thing sold. Or

even on this opinion the seeming difficulty may be reconciled, as before.

“Clandestinely,” in the preceding texts (II and III), denotes the want of the owner’s assent. Consequently, if the owner assent, a sale made even by one who is not owner is valid: and such is the current practice.

V.

MENU:—Him who sells the property of another man, without the assent of the owner, the judge shall not admit as a competent witness, but shall treat as a thief, who pretends that he has committed no theft.

Treating him who sells the property of another man, unauthorized by the owner, as one who is in fact a thief, but pretends he has committed no theft, the judge shall not admit him as a competent witness; that is, he shall never admit his evidence.

CULLÚCABHATTA.

But his punishment will be mentioned in another text.

The term of “sale without ownership” must be taken in its derivative sense, a sale made by one who is not owner; for **MENU**, the highest authority of memorial law, does not specify deposits and the like, in ordaining, that he who sells another’s property shall not be admitted as a competent witness; and it is irregular to establish another acceptance, when the derivative sense is apposite. And further, in the text of **VRĪHASPATI** (II) and the rest, deposits and the like are only mentioned illustratively: thus, should any powerful person sell a tree or the like, which belongs to some weaker man, pretending that it is his; on its afterwards appearing, from a judicial procedure, that he was not the owner, it is *held* a sale without ownership.

If any one of the parceners sell property which was inherited by five brothers on the death of their father, is it not a sale without ownership? and is not this inconsistent with the opinion delivered by authors in explaining the following text; namely,
that

that the gift, *or sale*, ought not to be made ; but if made, is valid?

VI.

VYÁSA :—A single parcener ought not, without the consent of his co-parceners, to sell or give away immovable property of any sort which the family hold in co-parcenary.

It should not be argued, that, each of the five brothers having dominion over that property, a sale by a single parcener is not a sale without ownership. The separate dominion of the five brothers over the same property is not admissible, according to the opinion of JÍMÚTAVÁHANA. Nor should it be argued, that, according to his opinion, the dominion of each is established over the property which each enjoys, or which each will receive when a partition is made : and thus the property sold by the parcener was actually his ; and consequently there is no difficulty. Were it so, another parcener could not share the price of that property. It is not proper to affirm, as consistent with the opinion of JÍMÚTAVÁHANA, that other parceners have no share in the price of undivided property sold by a brother with whom partition has not been made ; but, according to the opinion of lawyers, who contend for the common title of all the brethren in the whole of the wealth, surely they are all entitled to a share.

To the question thus proposed it is answered, the term ‘ joint wealth,’ according to the opinion of JÍMÚTAVÁHANA, should be used for what is brought into one common tenure ; when such property is sold by any one of the parceners, the price of it is joint property ; and in that case, what is enjoyed by each, becomes the property of each. Thus is the law demonstrated. And in this case, there is no punishment ; nor is there a sale without ownership ascertained by proof that another’s property has been sold, since it is not certain whether the seller is or is not the owner : the sale is therefore valid.

It should not be objected that a moral offence is committed, since there is in fact a want of ownership. That is admissible ;

a moral offence is even denoted by the expression “ought not to be made;” and the sale of joint property is forbidden, merely in the apprehension of a moral offence. In fact, the price of property sold by any one of the parceners, is enjoyed in common by all. To whom that property, which is sold, did belong, cannot well be determined, according to the opinion of JÍMÚTAVÁHANA: the dominion of all the parceners over it must be asserted, like their property in a single horse or the like.

The opinion of VÁCHESPATI BHATTÁCHÁRYA may be admitted upon the reason of the law: if the whole of the joint property be sold by one of the parceners, the sale is not valid so far as regards the shares of the other parceners, but is valid so far as regards the seller’s own share; and if it be sold with the consent of the co-parceners, the sale of the whole is valid. This will be made evident under the title of Subtraction of what has been given.

Should a creditor, selling a pledge, apply the produce to the payment of his own debts, what is the law in that case; for he has no property in the pledge? It is not *universally so*. But if he sell it before the period ordained under the title of Loans and Payment, the sale is not valid.

VII.

MENU:—Nor, after a great length of time, can he give or sell such a pledge*.

But he becomes the owner of the pledge at the appointed time.

VIII.

VRĪHASPATI:—After the time for payment has past, and when interest ceases, the creditor shall be owner of the pledge †.

And

* Book I, v. cxvii. The text would admit of a different interpretation, which seems to be here intended.

† Book I, v. cxv.

And again,

IX.

VRĪHASPATI:—When the debt is doubled by the interest, and the debtor is either dead or has absconded, the creditor may take his pledge and sell it before witnesses*.

If the creditor become owner of the pledge, how can the expression of VRĪHASPATI be pertinent (having received the amount of his debt, he must relinquish the balance†)? for this directs that the remainder shall be relinquished: now there is no relinquishment of any part of the price, when a man sells his own property. It must be understood, that the text above cited (VIII) denotes property in a certain part proportioned to the amount of the debt. Or the creditor becomes owner of the whole pledge, if the agreement were in this form, “should I not redeem the pledge when the debt is doubled, it shall become thy property;” or thus, “should I not redeem it in five years, it shall become thy sole property.” But if the agreement run not in such form, the property extends only to a part of the pledge proportionate to the debt. The text bears both senses.

When a piece of land measuring a thousand cubits, or when twenty trees have been pledged without an agreement in such form, if the debt can be liquidated by the sale of half the pledge, shall the whole be sold or not? It is answered, the whole should not be sold; for the sale is only directed for the payment of the debt. It should not be objected, that, were it so, the text directing the relinquishment of the remainder would be unmeaning. When a single copper vessel or the like has been pawned, since a part of it cannot be sold, the sale of the whole is necessary; and it is necessary that a part of the price (namely the surplus) should be relinquished. Nor should it be argued, that, were it so, the creditor being owner of a part only, the sale of the other part would be a sale without ownership. Like the case of undivided brethren, a partial ownership, without property in the whole, is incongruous.

What

* Book I, v. cxxi. 1.

† Book I, v. cxxi. 2.

What then is this partial ownership? It should not be called a concurrent property contemporary with the property vested in the debtor or in his heir: for in that case each would be equally entitled to half the pledge. This is concisely answered by establishing an ownership, on the authority of the law, in a greater or less value, according to circumstances.

When the king causes the property of any person to be sold, what is the law in that case? Why does the king cause it to be sold? By an act of violence; or for the payment of a fine, or of a debt? In the first case the sale is not valid.

X.

MENU:—What is given by force, what is by force enjoyed, by force caused to be written, and all other things done by force, **MENU** has pronounced void.

In the second case, if he do not cause the property to be sold, how can the amercement or debt be recovered? It should not be objected, that there is no occasion for his making the sale himself, since the purpose may also be effected by selling the property through *the intervention of the owner*. It is inconsistent with settled usage to suppose an offence in selling the property in the owner's presence, if he refuse to cause it to be sold. Nor is it void, as a thing done by force; for what is done by force without a *sufficient* cause, is alone void; and fines could not otherwise be recovered.

Some ground the validity of a sale made by the king, on his being lord of all, as declared by the text, "All subjects are dependent, the king *alone* is independent." But, were it so, the king's interest and the buyer's interest in the thing would be equal; and therefore the subject's right could not be vindicated: and further the sense positively is, that the sale of the owner's property ought to be made by the king with the owner's consent. But, if that owner do not consent to the sale of his effects for the payment of a just due, let the king compel him to consent, by blows, or harsh reproof, or other modes authorized by the law. Or, should he

he persist in his refusal, a reasonable punishment, for the offence of not assenting where assent is required, is proper.

But if the king, being much hurried, sell the effects without requiring the owner's attendance, and the owner, afterwards attending, contumaciously refuse to pay what was due, or to acknowledge the validity of the sale, then that contumacious person shall be compelled by harsh reproof, or other suitable mode, to admit the sale.

But should he attend and pay what was due, how can the sale be valid? The king cannot employ violence to render the sale valid; for an acknowledgement extorted by force would, in this case, be void (VIII); that is, it would be void in the case of a payment for which no time was stipulated. But if a period had been stipulated, and his conduct be contumacious after the period has expired, what has been already said concerning the sale of a pledge is equally applicable to this case.

The sale of a pledge may be valid, because it is a thing actually possessed; how can other effects, remaining in the owner's house, be sold by the king's permission? It should not be argued that the sale is valid, because it is made by a person not destitute of authority, the king being lord of all, and the text of MENU merely declaring void a contract made by a person without authority. CULLÚCABHATTA expounds "a person without authority," a person not authorized by the father or by the brethren.

XI.

MENU:—A contract made by a person intoxicated or insane, or grievously disordered, or wholly dependent, by an infant or a decrepit old man, or by a person without authority, is utterly null.

The law ordains, that the king shall not cause the property of another to be sold: but he shall enforce payment of a debt, or the like: and the meaning is, that he shall induce the debtor to discharge it.

How can the property of another, received in pawn, be enjoyed as a forfeited pledge, with the king's consent, under the words

of the text cited in the preceding book (Book I, v. CXX)? and how can the goods of another be sold by the king's directions, under the authority of another text (Book I, v. CXXII)? For the goods, though actually possessed, are the property of another.

If the debtor do not redeem the pledge at the stipulated time, it is not required that the creditor should keep the pledge; for the law shows that the debtor's property in it is forfeited by his neglect. Let the creditor enjoy it, or cause it to be sold, previously acquainting the king for the sake of respect, or of justifying the act. To this construction there is no objection: and if this exposition be proposed, it is admissible.

If a time were stipulated, the sale of the effects with the owner's consent is valid in law. Therefore it is consistent with the reason of the law, that, after the stipulated period has expired, sufficient effects should be attached to provide for the payment of what is due from a person who has absconded, and that they should be sold after a *reasonable* delay. But there is a distinction in respect to land.

Disquisition on Property in the Soil.

This earth, created by GOD, became the wife of PRĪT'HU; and afterwards, by marriage and otherwise, became the property of several princes.

XII.

Nerasinha purāna:—Thrice seven times exterminating the military tribe, PARASU RÁMA gave the earth to CASYAPA as a gratuity for the sacrifice of a horse.

By conquest, the earth became the property of the holy PARASU RÁMA; by gift, the property of the Sage CASYAPA; and, committed by him to *Cshatriyas* for the sake of protection, became their protective property successively held by powerful conquerors, and not by subjects cultivating the soil.

But annual property is acquired by subjects on payment of annual revenue: and the king cannot lawfully give, sell, or dispose
of

of the land to another for that year. But if the agreement be in this form, "you shall enjoy it for years ;" for as many years as the property is granted, during so many years the king should never give, sell, or dispose of it *to another*. Yet if the subject pay not the revenue, the grant, being conditional, is annulled by the breach of the condition ; and *the king* may grant it to another.

But if *no special agreement be made*, and another person, desirous of obtaining the land, stipulate a greater revenue, it may be granted to him on his application. Here reasoning must be adduced. For example, the following : it must of necessity be affirmed, that the cultivator has not an absolute property in the land ; otherwise the cultivator would take the sixth part of the produce of unclaimed land, which has been obtained as such by another.

XIII.

YÁJNYAWALCYA :—Let the king, receiving unclaimed property, give half to *Bráhmanas* : but a learned *Bráhmana* may keep the whole, for he is lord of all.

2. And the king shall receive a sixth part of unclaimed property occupied by any other person.

If the king himself receive unowned property any where situated, let him give half to *Bráhmanas* ; for the word *dwija* or *twice-born* here signifies the *Bráhmana*, as is shown by the subsequent expression "he is lord of all;" since no twice-born man, except the king and the *Bráhmana*, is lord of all ; and MENU declares the dominion of the king and the priest over the human species (XXIV). A learned *Bráhmana*, occupying unowned property, may keep the whole. But any other than a *Bráhmana* or king, occupying unowned property, must give a sixth part to the king, and may take the remainder himself.

Must the king, receiving from a subject the sixth part of unclaimed property, give half to the priest ? The answer is, unclaimed property denoting a thing which has no owner, and, when it is occupied by a private person, the property by occupancy altering

tering the condition of that thing, the king does not in this case receive unclaimed property ; therefore half need not be given to the priest.

Since the word 'king' here denotes lord of the soil ; and since the cultivator, being owner of that land, is *so far* equal to the king, he would be entitled to the sixth part of the unowned property occupied by him. *The answer is*, the word 'king' may be explained lord of the soil, to exclude another king : but a royal property is supposed in the use of the word ; the cultivator has a subordinate usufructuary property, not a royal property : and SRÍ CRĪSHNA TERCÁLANCÁRA thinks there may be, in the same land, property of various kinds, vesting in the king, the subject, and so forth. It should not be objected, if that be the case, why cannot the king give the land to another in the same year *for which revenue is paid* ? Because a feller or giver may, by sale or gift, annul his own property, and invest another with similar property, but cannot create property of another nature (for a sale by a subject cannot create property of another nature, namely royal property ;) therefore, usufructuary property being raised by a conditional gift to the subject, the king cannot again create property *in the same thing*, by a gift to another.

But whence is it deduced that such property vests in the cultivator ? There is no proof of it. His property is not by occupancy ; for, the king being a more powerful owner, his occupancy cannot be maintained : it is not by sale ; for no sale has been made : it is not by gift from the king on condition of revenue ; for, were it so, his property would be equal to the king's.

If it be said, the king, satisfied with the receipt of revenue, does not oppose a property by occupancy ; the answer is, in that case the property would remain, if the husbandman, not having surrendered that land, stay even in a distant country ; and thus the land could not be taken by another person. It is not fit that, property being established by occupancy while the king was satisfied, he should, afterwards becoming dissatisfied, have power to annul the occupancy or property ; for occupancy, having created a property, immediately ceases *to be a mere occupancy* ; and property cannot be annulled without the assent of the owner.

Some hold, that the subject is invested with ownership by a gift from the king on condition of revenue. If he go elsewhere, and
revenue

revenue be not paid, the gift is cancelled by the breach of the condition. It should not be objected that his interest in the land would be equal to the king's ; for the king's assent is not *given* in such a form. Thus, the king assenting in these words, "let a subordinate usufructuary property be held by thee, while my property remains in this land, which belongs to me ;" such property is created as is described by the terms of his assent. Nor should it be objected that in this case property is not created, nor is effect given to an existent property, but mere possession as of a thing pawned. This would be inconsistent with the explanation of husbandman, as given by CHANDÉSWARA and others ; that is, "owner of the field." Nor should it be objected ; how can there be property in what is already owned, since property resists a concurrent property ? SRÍ CRĪSHNA TERCÁLANCÁRA and others hold, that property prevents concurrent property of the same nature only : and, under the text which declares wealth common to the husband and wife*, the wife has property even while the husband's title subsists. If it be argued, that, in short, property generally prevents a concurrent property ; and the text, which declares wealth common to the husband and wife, merely authorizes her substitution for the duties of hospitality and the like ; and the difficulty being thus removed, there is not, in the case supposed, any property vested in subjects : then the husbandman would only receive half the produce of the soil, since the king would be entitled to enjoy the proportion to which *the owner of the soil* is entitled. If it be argued, that, obtaining the land by payment of revenue, as a wife is obtained by a nuptial gift, he who raises produce from his own seed, is entitled to that produce : even in that case, as a thing hypothecated to one person cannot be also hypothecated to another, so possession of land, already possessed by one person, cannot properly be given to another. A specific agreement should be made, when the land is delivered, that it shall be enjoyed year by year, until a greater revenue be offered by another person.

XIV.

MENU :—Having ascertained the rates of purchase
and

* Book V, v. 415.

and sale, *the length of the way*, the expenses of food and of condiments, the charges of securing the goods carried, and the neat profits of trade, let the king oblige traders to pay taxes *on their saleable commodities* :

2. After full consideration, let a king so levy those taxes continually in his dominions, that both he and the merchant may receive a just compensation for their several acts.
3. As the leech, the suckling calf, and the bee, take their natural food by little and little, thus must a king draw from his dominions an annual revenue.
4. Of cattle, of gems, of gold and silver, *added each year to the capital stock*, a fiftieth part may be taken by the king; of grain, an eighth part, a sixth, or a twelfth.
5. He may also take a sixth part of the clear annual increase of trees, flesh-meat, honey, clarified butter, perfumes, medical substances, liquids, flowers, roots, and fruit;
6. Of gathered leaves, pot-herbs, grass, utensils made with leather or cane, earthen pots, and all things made of stone.
7. A king, even though dying *with want*, must not receive any tax from a *Bráhma*na learned in the *Vé*das, nor suffer such a *Bráhma*na, residing in his territories, to be afflicted with hunger :
8. Of that king in whose dominion a learned *Bráhma*na is afflicted with hunger, the whole kingdom will in a short time be afflicted with famine.
9. The king, having ascertained his knowledge of scripture and good morals, must allot him a suitable

able maintenance, and protect him on all sides, as a father protects his own son :

10. By that religious duty which such a *Bráhmaṇa* performs each day, under the full protection of the sovereign, the life, wealth, and dominions of his protector shall be greatly increased.

11. Let the king order a mere trifle to be paid, in the name of the annual tax, by the meaner inhabitants of his realm, who subsist by petty traffick :

12. By low handicraftsmen, artificers, and servile men, who support themselves by labour, the king may cause work to be done for a day in each month.

13. Let him not cut up his own root *by taking no revenue*, nor the root of other men by excess of covetousness; for, by cutting up his own root *and theirs*, he makes both himself and them wretched.

Let him levy taxes on traders, who subsist by purchasing commodities cheap, and vending them at an advanced price. What taxes? To this the legislator replies, having ascertained the rates at which commodities are purchased, and at which they are sold; and having ascertained the profit, with the charges of travelling, of subsistence, of transport, and of safeguard after importation, let him levy taxes : that is, let him take the due proportion of the sum which remains after defraying all charges. RAGHUNANDANA expounds the terms of the text (*yógacśhēma*) transport of goods to be imported, and safeguard after importation. Let the king so act, that he also may receive benefit out of the profits of trade *which remain* after defraying charges, and that the merchant may receive just compensation for his labours.

XV.

PARÁSARA :---Let the king gather blossom after
VOL. I. H H blossom,

bloffom, like the florist in the garden; and not extirpate the plant, like a burner of charcoal.

As the florist in the garden plucks blossoms successively put forth, and does not eradicate the flowering shrub; so should the king, drawing revenue from his subjects, take the sixth part of the actual produce: but the maker of charcoal, extirpating the tree, burns the whole plant; let not the king so treat his subjects.

MÁD'HAVA.

XVI.

The *Mahábhārata* :---Let the king gently draw revenue from his dominions, as the leech takes its natural food by little and little.

The fiftieth part, and other proportions of the profit gained by commerce, must be understood generally of all profit; for no distinction is mentioned.

XVII.

VRIHASPATI:—Giving a sixth part to the king, a twenty-first part to deities, and a thirtieth part to priests, a man offends not by applying himself to agriculture.

From the concurrence of this text, and no distinction being mentioned, this very rule must apply to the receipt of a part of the gain in all cases: and MÁD'HAVA places the text of MENU under the title of Revenue in general.

“Of grain, an eighth part, a sixth, or a twelfth:” three rates, primary and secondary, for the difference of circumstances. Consequently, a greater revenue is permitted in the exigence of distress. But never shall any tax be received from a *Bráhmāna* learned in the *Védas* (XIV 7). Shall not the king prevent his cultivating land; and thus there will be no revenue to receive from him? The text declares it infamous, that such a *Bráhmāna* should be afflicted with hunger (XIV 8). Therefore the king should assign

assign a suitable maintenance to a learned *Brāhmaṇa*, who has not a maintenance already allotted to him. To confirm this, *MENÜ* himself adds : “ the king, having ascertained his knowledge of scripture and good morals, must allot him a suitable maintenance ;” that is, such a maintenance as may exempt him from falling into contempt. Do not the subjects pay a sixth part as a token of respect, because the king protects them ? And, if the *Brāhmaṇa* learned in the *Vēdas* pay not a sixth part, shall not the king protect him ? To those who entertain this doubt, the Sage replies : “ the king must protect him on all sides,” from thieves and others, not in words merely, but with *exertion of mind and body*, as a *father protects his son*.

To the doubt above mentioned, founded on the mistaken notion that such a *Brāhmaṇa* does not give a sixth part, is it not answered, that he who raises produce, or buys and sells things, gives a part of them ; and as the *Brāhmaṇa* learned in the *Vēdas* acquires merit, of which he gives a part, he also must necessarily be protected by the king ?

XVIII.

The divine CĀLIDASA :—The wealth of princes, collected from the four orders of their subjects, is perishable : but pious men give us a sixth part of the fruits of their piety ; fruits which will never perish*.

How does it follow that *Brāhmaṇas* learned in the *Vēdas* give the sixth part required by the text of *VRĪHASPATI* ? The text cannot be well explained by the gift of a part of the fruits of piety ; for that is inconsistent with the concurrent gift of a part to deities and priests. Some refer the text (XVII) to others than a *Brāhmaṇa* : but that is not the opinion of *MĀD'HAVA* ; for, immediately after that text, he mentions the mode in which agriculture may be practised by a *Brāhmaṇa*, and quotes a text of *MENÜ* concerning the practice of husbandry by *Cshatriyas* and others. The difficulty may be thus briefly reconciled : if a *Brāhmaṇa* learned in the *Vēdas*, for his own justification, voluntarily pay

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revenue,

* *Sacontalā*, p. 41, Calcutta edition.

revenue, let the king, receiving it, appropriate it to the use of deities and priests; but if he pay it not spontaneously, the king must not demand it.

The sixth part is explained by MĀD'HAVA, one part in six. By parity of reasoning, the rule is the same in respect of the thirtieth part.

XIX.

MENU:—A sixth part of *the reward for* virtuous deeds, performed by the whole people, belongs to the king, who protects them; but if he protect them not, a sixth part of their iniquity lights on him.

Under this text, which includes all classes, the king, who protects his subjects, receives a sixth part of *the reward for* virtuous deeds performed by them, although they also pay revenue. What parity is there in comparison with the *Brāhmaṇa* learned in the *Vēdas*, since the people at large give part both of the wealth and merit acquired by them? It must be understood, that the contribution is equal, or even greater, since a virtuous *Brāhmaṇa* learned in the *Vēdas*, acquiring great merit, gives *a part of a great reward for* many virtuous deeds. A *Srōtriya*, or *Brāhmaṇa* learned in the *Vēdas*, is thus described:

XX.

DÉVALA:—A priest who has studied one 'śac'hā of the *Vēda*, or one 'śac'hā with the law of sacrifice, or with the six *angas* or bodies of learning, and who performs the six prescribed acts, is named *Srōtriya* learned in law.

The six *angas*, or bodies of learning, are 'śicṣā, *calpa*, *vyācarana*, *ch'handas*, *jyōtiṣ*, and *nirucṭi**. The prescribed acts are declared in the following text:

XXI.

* 'Śicṣā, on pronunciation of vocal sounds. *Calpa*, detail of religious acts and ceremonies. *Vyācarana*, grammar. *Ch'handas*, prosody. *Jyōtiṣ*, astronomy. *Nirucṭi*, on the signification of difficult words and phrases. Asiatick Researches, vol. i. p. 341.

XXI.

MENU:—Reading the *Védas*, and teaching *others* to read them, sacrificing and assisting *others* to sacrifice, giving *to the poor if themselves have enough*, and accepting *gifts from the virtuous if themselves are poor*, are the six prescribed acts of the first-born class.

Let it not be supposed that an ignorant *Bráhmāna* is not to be respected ; for MENU, premising that a king, though in the greatest distress, should not provoke *Bráhmanas* to anger, declares the danger of provoking even an ignorant *Bráhmāna*.

XXII.

MENU:—A *Bráhmāna*, whether learned or ignorant, is a powerful divinity ; even as fire is a powerful divinity, whether consecrated or popular.

“Let the king order a mere trifle to be paid” (XIV 11) by the meaner inhabitants of his realm (inferior in rank to the priest), who subsist by cultivation and other modes before mentioned, or by handicraft and the like not previously mentioned. Another contribution from handicraftsmen and artificers is mentioned in the subsequent text (XIV 12). Thus some expound the text (XIV 11). But in fact the term used in the text intends *petty traffick*, and the profession of a singer and the like. In the subsequent text, labourers, such as thatchers of houses and others, and artificers subsisting by work in cane and wood, are intended : as a distinction might be supposed between persons subsisting by labour or handicraft only, and persons subsisting by the sale of the produce of their labour, both are mentioned ; but in fact the terms are synonymous in the dictionary of AMERA. “By these, and by servile men, the king may cause work to be done for a day in each month,” employing handicraftsmen and artificers in

thatching houses, and in working on cane and wood, and employing *Súdras* on servile labour. It is necessary they should contribute revenue : to lighten the labour, they may pay to the king an equivalent out of wealth gained elsewhere, and the king may hire others for the labour required. Thus, if the attendance of a multitude of artificers be inconvenient from the magnitude of the kingdom, he may levy taxes equal to the value of labour for twelve days in the year.

The king may levy taxes at such rates ; and these rates are directed by the law in times void of distress ; therefore he may not exact a greater revenue : but the prohibition against receiving any tax from a learned *Bráhmaṇa*, even in times of distress (XIV 7), implies, that a greater revenue may be received from others in such times. Let him not make himself wretched in the apprehension of transgressing the law, nor anticipating distress, or providing for his own gratifications, or desirous of amassing wealth, make his subjects wretched (XIV 13). Let him not cut up his own root, that is, his life, *by taking no revenue* ; nor the root of others, by excess of covetousness : such is the construction of the text. The king should preserve himself for the benefit of others, for he himself protects others ; and if he perish, others would not be protected. On this exposition, the receipt of greater revenue is improper ; but in times of distress a greater revenue may be taken. Distress not being perpetual, if a sixth part of the crop have been stipulated at the time of granting the land to the cultivator, no distress then existing, should distress afterwards arise, it is fit that a greater revenue should be exacted, notwithstanding that stipulation. Such is the induction of common sense.

XXIII.

MENU :—A military king, who takes even a fourth part of the crops of his realm at a time of urgent necessity, *as of war or invasion*, and protects his people to the utmost of his power, commits no sin.

From the circumstances of the times, if confidence cannot be placed in the subject, the value of a sixth part, or other proportion

tion of the crop, any-how ascertained, may be taken, whether the actual produce be more or less than was estimated : this method is authorized by settled usage, and is indicated by the text.

Others hold, that the king has no property in the soil, nor power to dispose of the subject's abode, because all have a right in the soil ; since the earth was created for the support of living animals, as expressed in the *Srī Bhāgavatta* : “ *The earth, which GOD created for the abode of living creatures :*” and because MENU has only declared, that the subjects shall be protected by the king.

XXIV.

MENU :—Since the Lord of created beings, having formed herds and flocks, intrusted them to the care of the *Vaisya*, while he intrusted the whole human species to the *Brāhmaṇa* and the royal *Cshatriya*.

Were it so, would it not be uncertain how many subjects shall be protected by what king ? To this they reply, that each king shall protect the inhabitants of that country, whereof the inhabitants can be exempted from the dominion of every other person.

But, in fact, without property in the soil, there can be no certain rule for the protection of the subjects. Let it not be said, that the rule above mentioned suffices ; namely, that the subjects are to be protected in such an extent of country as can be withdrawn from the dominion of another : for, should the possibility of excluding another authority be received as naturally included in the definition, a powerful king, who from tenderness omitted to seize another realm, would be criminal in not protecting the subjects of that realm, since he is able to possess himself of it. Nor should it be argued, that the rule directs the protection of subjects in that country, from which other authority is actually excluded ; for, other authority any how subsisting therein, it might be supposed that the king was not bound to protect the inhabitants of his own realm, so long as that authority was not exterminated.

If it be asked, what is the rule on your opinion? And if it be argued, that the positive necessity of supposing a proprietary right, and the consequent obligation on the king to protect the inhabitants of that country, of which he is proprietor, should not be affirmed, because such property is not deduced from positive precept; *we answer*, the exclusion of every other authority is naturally implied, and it is positively required that there be “a right of property co-ordinate with the non-existence of a determination not to exclude other authority.” It should not be argued, that the obligation of protecting the subject need only be supposed, for it is troublesome to establish another proprietary right. A king’s gift of his realm is mentioned in the *Purānas* and in other works (“he gave his ancient dominions to the performer of the sacrifice”): consequently a real ownership is vested in the king. It should not be said, the gift, in the instance quoted from the *Purānas*, means a gift of the revenue payable by the subjects of his ancient dominions. The gift could not take immediate effect; for the king’s property has no foundation to rest on, since the revenue is not yet paid. Nor should it be said, the property will arise at a future time, from the past existence of the act of assenting, which has only a momentary duration*, as in the case of a corrody, where a future property is created. A gift of land by the king is mentioned in a text of YÁJNYAWALKYA (Chap. IV, v. 34); and Lord of the earth (*mehipati*) and similar regal titles are often mentioned.

Is the earth unowned if the king have no property in it? If it be alleged that the soil is not unowned, since the subject has property by occupancy; it is asked, cannot the king occupy land? The king may also have property in the land by occupancy. Therefore the right, both of the king and the subject, in the soil, is proved upon the concurrent opinions of CHANDÉSWARA, SRÍ CRĪSHNA, TERCÁLANCÁRA, and many other authors.

Property must be discriminated by occupancy: thus, if another invade the land occupied by subjects, the king opposes him, and land is occupied by subjects with the king’s consent. Kings were created by God to decide the various contests between subjects concerning

* This alludes to philosophical reasoning on the relation between cause and effect.

concerning occupancy and the like, and to maintain just proceedings: therefore the king, as lord of his subjects, is called lord of men (*nerapati*). By his own power, the king prevents others from seizing the land over which he has dominion; by his own power, he legally seizes the land over which others reign: therefore he is not subordinate to the subject.

If a potent subject be able, independent of the king, to resist invaders, and even to seize the lands of others; shall his property be deemed independent of the king? No; for that subject ought to be punished by the king, if he transgresses the law: but if the sovereign be not able to inflict punishment on him, even he is king.

Any king who pays tribute to a foreign prince, is nevertheless a king, if he do not surrender his regal power. But a person who receives a village from the king, undertaking to pay the revenue of it in the expectation of benefit to himself, is an intermediate owner between the king and the subject.

This earth therefore is the cow which grants every wish; she affords property of a hundred various kinds; (inferior, if the owner need the assent of another proprietor; superior, if his right precede assent;) while she deludes a hundred owners, like a deceiving harlot, with the illusion of false enjoyment: FOR, IN TRUTH, THERE IS NO OTHER LORD OF THIS EARTH BUT ONE, THE SUPREME GOD.

The subject's property in the soil is weaker than the king's, for the subject is weaker than the king; but it is founded on the reason of the law, and on settled usage: therefore the land of one subject ought not to be sold by the king to another. But how can this sale be sale without ownership, since the king is owner of the land, as well as the subject? It should not be affirmed, that the sale made by one who holds not such property as is conveyed by the sale, is sale without ownership; for this is inconsistent with the opinion of those who contend for a property in the subject dependent on a grant from the king. Thus, according to that opinion, the subject's property is founded on a grant from the king as superior lord. But, what difference is there in the effect of a gift or sale? According to the opinion, wherein it is contended that the subject's property depends on the gift of the king, so long as the inferior property is not granted, the land has
only

only one owner : afterwards, a double property arising, an owner may annul his own property, but not the property of another person ; else, why could not the subject annul the king's property, by selling his own land ? Accordingly, the specifick assent of the owner being the cause of annulling property of the same nature, the king cannot annul an inferior property : and this very maxim may be maintained on the opinion even of those who contend for a property by occupancy, on the authority of the text which describes the earth as the abode of living creatures. According to this opinion, wherein property by occupancy is maintained, if any subject, occupying land, after some time go to a distant country without surrendering the land, can no other person take the land ; since, without his surrender of it, his property is not annulled ? The meaning of the text which describes the earth as the abode of living creatures, is positively this ; the property is his who uses the land where he resides, and while he uses it : and thus, when land belonging to any person is sold by the king, it is a sale without ownership.

XXV.

CÁTYÁYANA :—Let the judge declare void a sale without ownership, and a gift or pledge *unauthorized by the owner*.

It must be understood from the proximity of the terms, that the gift or pledge is made by one who is not owner of the thing. Or the suffix is omitted for the sake of the metre. “ Declare void ;” that is, the buyer having received back the price, the owner recovers his chattel.

XXVI.

NÁREDA :—The owner, finding a thing which had been sold by a stranger, shall recover it.

“ Finding ;” the term is so explained in the *Retnâcara*.

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The owner shall recover his own property, sold by a stranger, or one who is not owner of it: blame is imputable to the buyer; it is imputable to him because he bought not publickly, *but bought the chattel* without acquainting the king or his officers (XXXVII). If it had been stolen by a thief, he must restore the chattel if the thief be not found, as will be subsequently noticed.

XXVII.

MENU:—A gift, or sale, thus made by any other than the true owner, must, by a settled rule, be considered in judicial proceedings as not made.

How is it called a sale, for the word “sale” implies the act of annulling former property upon the receipt of a consideration; now the former property cannot be annulled by the act of a stranger? The word “sale” is here employed in a secondary sense, denoting the delivery of a thing, with the previous receipt of a consideration.

But some argue that sale is the act of assenting to the annulling of former property, with the previous receipt of a consideration; and even gift is the assenting to the annulling of former property, but without the receipt of a consideration: and this they hold to be the sense of the verbs ‘sell’ and ‘give.’ Thus, by the authority of the law, in the case of a perfect gift or sale, the property of the former owner is annulled by his assenting to the annulling of it: but, in the present case, the former property is not annulled, though such assent be given, *but given by a stranger*: for a stranger’s assent cannot annul property: on the contrary, the giver or seller shall be punished. The owner’s assent to the annulling of his own property is the cause of *his* property being annulled; and *his* assenting to another’s property is the cause of another’s property; not generally any assent to the annulling of former property, and any assent to the raising of a property in another: for the cause and effect would be interchangeable. Thus, on that opinion, the gift or sale is truly the cause of annulling a *former* property, and investing another with it: because gift is the assenting to vest a property in another, *thereby previously*
annulling

annulling a *former* property ; and sale is the same, but with the previous receipt of a consideration.

This opinion is contradicted, because it would be inconsistent with the text ; “ a gift or sale, thus made, must be considered as not made ” (XXVII). When a gift or sale subsists, though the assent was given by a stranger, how is it considered as not made ? With reference to this question, authors write, that gift is a relinquishment producing the effect of vesting property in another, after annulling one’s own property.

In the gift of another’s goods, there is not such a relation between cause and effect as can produce a *real* gift : nor does the law express, that fruit is obtained by the gift of one’s own property ; for “ his own ” is not specified in the text, “ he who gives land, obtains land.” It therefore follows, that “ not made ” (XXVII) may be explained, similar to a *gift* or *sale* not made, in as much as it produces no fruit. Another exposition will be mentioned in the fifth book, On Inheritance. The conjunctive particle, in the text of CĀTYĀYANA (XXV), is employed to comprehend things not mentioned, namely barter and the rest. Consequently the sense in effect is, ‘ by the assent of one who is not owner, another has neither right of property nor of possession.’

What is the rule if the land of a subject be sold by the king ? Why does the king sell it ? Does he sell it by an act of violence, or to recover an amercement or the like ? In the first case, it is null (X) : and, according to the opinion of those who hold that the king, and not the subject, has property in the soil, there is no sale in the case supposed ; for there is no former owner but the king ; and the king, selling the land, does not relinquish his own right : therefore, to give possession to another occupant, and to remove the former occupant after satisfying him, some consideration must be given : if he, being satisfied, accept it, in that case there is no dispute ; but if he refuse it, possession given to one, of a thing already possessed by another, is invalid, like the hypothecation of a thing which was already pledged to another person.

XXVIII.

YĀJNYAWALCYA :— In all *other* contested matters,
the

the latest act shall prevail; but, in the case of a pledge, a gift, or a sale, the prior contract has the greatest force.

It should not be argued, on the superior force of the earliest contract, as thus ordained by YÁJNYAWALCYA, that it may be true of pledges; but the superior force of the latest act should be affirmed in this case. The parity of this case and of the case of a pledge is reasonable; otherwise, why should not the king daily grant the same land to various subjects? Nor can this objection be reconciled to the law. This separate head of judicial procedure being adopted, because the delivery of land by the king to the subject is not included under the head of contests on boundaries, the law of pledges must be extended to it, by parity of reasoning. Or it may be answered, such a bad exposition should not be admitted. Every forcible act is void: but if force be not employed in this case, *the act is valid*; for every man has legal capacity for a gift or sale of his own property. But it would follow, according to the opinion mentioned, that the seeming sale of the subject's land by the king is valid: the subject therefore does not receive its price; it is received by the king *in his own right*: and in that case, an amercement is not recovered from the subject *by a sale of land*; and the king incurs a taint of sin. But, on the other opinion, a sale forcibly made by the king is void.

In the second case (*where land is sold to make good an amercement or the like*), according to the opinion, wherein the king's sole property is maintained, the amercement is not recovered; as has been already mentioned. According to the other opinion, there is no *express* ordinance for the sale of land belonging to subjects who are missing, after the period for *the recovery of what is due from them* is passed; but the reason of the law *authorizes the sale*, since an amercement or the like could not otherwise be recovered: therefore the king should afterwards compel the owner to consent. But, if the owner be present, the sale should be made with his consent; or, if he withhold his consent, then other punishment is proper: but, since punishment cannot be inflicted on absent persons, it is fit their property should be sold. When the sale has been completed by the king, and the subject immediately attends, bringing the amount *due from him*; then indeed the sale
made

made by the king is void, for the owner's property is not forfeited. The king cannot forcibly compel him to admit *the sale*, saying, "this property has been delivered by me to such a person; thou must therefore confirm the sale, for I will not accept the amount." But if the owner do not then attend, this sale *assumes* the form of a punishment for his offence. Else, inflicting other punishment, let the king release his property. Thus some *expound the law*. It is declared more fully under the title of Contests on Boundaries. To enlarge in this place would be superfluous.

It has been said, that the buyer shall receive back the price paid, and the owner shall recover his property: shall the owner repay the price?

XXIX.

YÁJNYAWALCYA:—*The buyer* is justified by producing the feller: the owner recovers his property, the king receives a fine, and the buyer receives back the price from him by whom the thing was sold.

The text has been already expounded in the first book on Loans and Payment. (Book I, Chap. ii, Sect. 3, Art. 3.)

According to the opinion of 'SÚLAPÁNI, the buyer is justified by producing the feller; and the owner recovers, or obtains possession of, his own property. According to VÁCHESPATI BHATTÁCHÁRYA, he recovers the right of property. A thief having acquired a property by occupancy, the owner's property has been annulled, but is now revived under the authority of the text; "the owner recovers his property."

From whom does the king receive a fine? From the person subsequently mentioned, namely him by whom the thing was sold; and the buyer receives back the price from the same. The property in the thing is revived, like property annulled by the semblance of a gift.

This text being placed under the title of Sale without Ownership, and the expression "the owner recovers his property," not

being otherwise pertinent, the text must be understood as intending sale without ownership.

XXX.

VRIHASPATI:—When the feller has been made appear, and has been condemned in the law-suit, let the judge cause him to pay the price to the buyer and a fine to the king, and restore the property to its owner.

When he has been condemned in the law-suit, (when it is proved that he sold the thing, and was not the owner;) he shall be compelled to repay the price, &c. not upon a simple assertion.

Here, payment of the price to the buyer being required, what price shall be paid; the price actually received, or the present value of the thing?

XXXI.

NÁREDA:—In a case of sale without ownership, the feller must restore the thing to the owner, and pay to the purchaser the price for which it was sold, and a fine to the king, as directed by law.

This contradicts the childish supposition that the buyer is entitled to the thing, and the owner to the price only; for the sale is void. “The price for which it was sold;” the price agreed on at the time of the sale, and received by the feller. If any person steal and sell a cow, and afterwards the owner, seeing the cow, claim her; when the price is to be repaid to the buyer, that very price shall be recovered, though the value may have been diminished by the cow being worn by age: shall not the price be therefore recovered, even though the cow have died, if the purchase be proved by evidence; for the buyer has a right to the price, since it was a sale without ownership? It may be so: but this distinction, founded on the reason of the law, is justly inferred; if the cow become useless by age, still the real owner must

must receive that very cow, and the buyer receive the price he paid; but if the cow become useless, through the buyer's fault, from want of food, or from excess of labour, the buyer must receive less than the price, and the difference must be paid to the owner of the cow: it is not the seller's gain. If the cow have died by mere accident, the recovery of the price is the buyer's gain, and the owner shall not obtain a cow from the buyer; for his cow is lost to him, and the law does not show that any equivalent shall be given. This is pertinent on the opinion of SÚLAPÁNI.

But sale without ownership is established with difficulty on the opinion of those who assert that a thief has property in the thing stolen; for, *according to that opinion*, a thief has ownership. It is thus *reconciled*: the thief's ownership ceasing when the cow is recognized by the real owner, it then becomes sale without ownership. If it be so, is not every sale a sale without ownership? for all sellers, by the act of selling, become non-owners; since perpetual ownership, *even after alienation*, is no where admitted. Nor should it be argued, that "owner" may be here understood in the triple sense of actual owner, of him who annuls that ownership by sale or the like, and of him who was not previously the owner; for property is annulled by a sale made even by a thief. To the question thus proposed, the answer is, No; for there is no difficulty in supposing an owner different from a thief to be positively intended by the word "owner," in the expression sale without ownership, *or sale by one who is not the owner*. Of what use is this supposition? for the difficulty may be removed by not admitting the thief's ownership: and the objection is answered by asking, how can property arise without acquisition by an owner? The following text shows that property does vest in a thief:

XXXII.

NÁREDA and the *Vishnu-dhermóttara*:— What is acquired by fervile attendance, gaming, theft or the like, or by disguise, robbery, or fraud, all that is called property.

Former

Former owner, *or possessor*, in a text which will be quoted from VRĪHASPATI (XXXIII), must have some meaning ; but if thieves have not ownership, the word “ former ” would be unmeaning, since there would be nothing to which it could be opposed. Accordingly, if a person, having bought at a high price effects stolen, is dissatisfied *with his purchase* ; and, after the period limited by law *for the rescission of purchase*, discovering that this sale, having been made by a stranger, is void, wishes to return the thing ; it is not to be returned, even though the owner of the thing, who had not disposed of it, be dead. Such is the rule laid down by VÁCHESPATI BHATTÁCHÁRYA. According to his opinion, if a cow, which had been stolen and sold, die, it is lost to the buyer ; for it is the loss of a thing possessed by him as property : therefore, in that case, he shall receive the price *from the seller*, on delivering an equivalent *to the former owner* ; and, in the case of a thing stolen, the former owner receives an equivalent, under the authority of the law, if the original thing be lost.

But, according to the opinion of SÚLAPÁNI, property, in the text of NÁREDA (XXXII), intends the power of disposing of the thing at pleasure ; and the word “ former ” is employed in the text of VRĪHASPATI, in opposition to the thief and the buyer, who are secondary owners, in as much as they perform acts of ownership. It is a bad rule, in the case of effects stolen and sold, that a buyer, discovering the theft, and desiring to return the effects, may not return them. Thus a buyer discovering the theft, and desiring to restore the effects, but forbidden by the king or the arbitrators, keeps the effects and returns to his house ; after some days the owner comes and claims the effects, and the thief who had clandestinely sold them is dead ; in this case the effects are the former owner's, and the buyer, though not in fault, would be a loser by restoring the effects without receiving the full price. He does not incur blame, wherefore he should lose half the price, as in the case even of a thing publicly bought ; for, on discovering the theft, he was willing to return the effects.

Some hold, that there is no difficulty, if the producing of the feller (XXIX) be explained discovering the theft of the seller, that is, making it known to the king's officers, or to arbitrators or the like. Therefore, in this case, the buyer informing the king that the seller is a thief, may recover the price. No dif-

ference results from the two opinions ; but, the text of NÁREDA being the sole ground for admitting *such* property, the practice, exhibited in explaining the opinion maintained by VÁCHESPATI BHATTÁCHÁRYA is bad. Is there not a difference in the result of these opinions ; since, according to 'SÚLAPÁNI, it is not the buyer's loss, if the cow, which had been stolen and sold, die ; for it is not the accidental loss of what was possessed by him as property ; but, according to VÁCHESPATI BHATTÁCHÁRYA, it is the buyer's loss, for it is the loss of what was possessed by him as property ? No ; for, the sale being null, because it was a sale without ownership, it is fit, even on the opinion of VACHESPATI BHATTÁCHÁRYA, that the loss should fall on the thief. Consequently, the cow being dead, there is no present opportunity of investigating the property ; but, the price not being lost by *the same* accident, the buyer has a right to it. According to the opinion of VÁCHESPATI BHATTÁCHÁRYA, if the price of the thing sold be fortuitously lost, and it afterwards appear to have been a sale without ownership, is it not improper to investigate the property, and require compensation, since the money is lost ? Even according to the opinion of 'SÚLAPÁNI, is not the thief unaccountable, since it was lost, while it *yet* belonged to the buyer ? and, in a similar case, if the cow be living, shall she not be received back by the thief, since the sale is void, being made without ownership ? If a thing bailed to an artist, and not restored by him, be lost by accident, it is the owner's loss, for there is no fault in the artist ; but if it be lost after the stipulated period *for repairing it*, &c. it is the artist's loss, for his exceeding the stipulated time is a fault (Chap. I; v. 53). So the thief, committing a crime by selling the goods of another, must repay the price even though the goods be lost : but if they were bought with previous knowledge of the theft, the price of those goods, should they be lost by accident, is not to be repaid ; for both are criminal. Even in the case of the death of a cow, which had been stolen and sold, the owner shall recover an equivalent from the thief ; for he is criminal, as an artist who exceeds the stipulated time is faulty. If it be said, the thief is criminal in regard to the owner, because he may be thus accused, " wherefore has my cow been delivered to another ? " But how is he criminal in regard to the buyer, to whom he delivered the cow ;

cow ; for he made a contract, receiving the price on the delivery of the thing? Even the buyer can arraign him. For example :
 “ he is dishonest in having taken my money, giving me another’s property, which cannot long remain, and which is
 “ therefore unfit for my intended uses : why did he not keep it
 “ at home ? ”

This opinion should be received as the settled rule : the several opinions, previously noticed, were mentioned for the sake of illustration. To enlarge would be superfluous.

SECT. II.—*On the Production of the Seller, and Justification of the Buyer.*

XXXIII.

VRĪHASPATI : — When the former possessor shall come and prove his property in the thing bought, let the purchaser produce the feller ; for thus may he clear himself.

The *Retnâcara* explains “ the former possessor,” the person who was owner of the thing before the theft, or who had power to dispose of it at pleasure : “ the principal ” here signifies the feller. The legislator means the principal in the sale.

XXXIV.

YĀJNYAWALCYA : — He who has purchased *the goods of another*, which had been lost or stolen, must, *when accused by the owner*, cause the thief, or other person who sold them, to be apprehended :

but if *circumstances of time or place prevent his apprehension*, the buyer must himself restore the goods.

He who has acquired, or obtained by purchase or the like, the goods of another lost and seized or stolen, being accused by the original owner, (this should be supplied in the text,) must cause the man who stole them, in other words the man who sold them, to be apprehended by the king's officers: he must cause him to be seized. But if he cannot cause him to be apprehended, being prevented by circumstances of "time or place," that is by the death or absconding of the feller, or the like; in that case, the buyer must himself restore the goods, when the owner's property in them is proved. Such is the exposition approved by CHANDÉSWARA. "Cause to be apprehended," is explained by some, *show, or point out*; for the verb *grah*, take, is used in the sense of know.

The goods must be thus restored, without *receiving back* the price, if the purchase was privately made; but not so if the purchase was openly made.

XXXV.

CĀTYĀYANA:—Either let a man make an open purchase *in an assembly of people*, or let him produce the feller; but let time be given him for the production of the feller, according to the number of *yójanas*.

2. Having offered to produce the feller, if he afterwards tender proof of a fair sale, let the judge require the production of the feller; there is no use of such proof *of a fair sale* by the defendant, *who first offered another justification*.

By proving an open purchase, or by producing the feller, let the buyer vindicate his innocence. CHANDÉSWARA.

Con-

Consequently the alternative of an open purchase and production of the seller denotes mutual opposition. It follows, that the same exemption from making good the effects himself, which the buyer obtains by producing the seller, is also *allowed* in the case of an open purchase. Let him prove his innocence, and therefore be exempt from penalties.

“An open purchase ;” a purchase known to arbitrators and to the king’s officers. “Let time be given him for the production *of the seller* :” if the seller reside in a distant country, he cannot be produced at the instant ; let time be allowed for that purpose, and let the recovery of the thing be so long deferred, “according to the number of *yōjanas* :” let so much time be given as is requisite to travel, going and returning so many *yōjanas* as is the distance to the seller’s residence.

“Having offered to produce the seller, &c.” (XXXV 2): the buyer, when first accused, having said, “I will produce the man from whom I received the thing,” afterwards says, “many persons know of my purchasing it ;” in that case, his first and second plea differing, on which plea shall the decision rest? To that question the answer is this : “there is no use in his proving an open purchase ;” that is, upon such proof he will not be held innocent : *let the judge* require the production of the seller. This interpretation agrees with the *Retnācara*.

It must be considered, that the text provides against dishonesty. Therefore, if the buyer, first undertaking to produce the seller, go to fetch him ; but the seller happening to be dead, the buyer returns and says, “the seller is dead, but all the witnesses named know that the thing was bought from him ;” in that case, if all the circumstances be proved, the decision must depend on the fairness of the sale ; but otherwise, it depends on the production of the seller.

According to VÁCHESPATI MISRA, the text merely exhibits the natural inference. Thus, when the buyer says, “I bought this thing of DÉVADATTA, and all know the purchase and the commodity bought ;” the seller must be apprehended, for thus may the sale be proved. But if the seller be not forthcoming, the justification of the purchase must depend on its publicity : and, according to this opinion, the necessity of proving a fair

purchase surely follows in case of the feller's death, as above mentioned.

If the buyer first plead that the sale is publicly known, and afterwards offer to produce the feller, how is the law settled in this case? Since the text requires the production of the feller, when the sale is pleaded after offering to produce the feller, and since the circumstances of the case are here reversed, therefore proof of a fair sale should be required.

If it be argued, that the reason of the law shows the production of the feller to be requisite in all cases, for MISRA *says*, it is by producing the feller that a fair sale may be proved; but, according to the *Retnácara*, the first plea should be tried:—some reply, that the result of the different expositions of both authors is the same, and it should be so admitted: thus, if the sale be first pleaded, and the production of the feller be afterwards offered, both proofs should be received; for there is no ordinance for rejecting either proof, nor is it consistent with the reason of the law.

What shall be the decision if the defendant, failing in one proof, succeed in the other? The defendant, any-how clearing himself from suspicion of theft, gains his cause; and this may be effected by either proof. By failure in which of them could his success be prevented, since both are severally declared by the law to be *admissible* proofs in justification of purchase?

What is the mode of proceeding, when a real thief, employing various methods to conceal the theft, advances several pleas at several times? In reply it is asked, how is the theft ascertained, unless he fail in the proofs required by the law? If it be said, this is inconsistent with the exposition of the text of CÁTÝÁYANA according to the *Retnácara*, for proof of a fair purchase is in such case pronounced inadmissible; it is answered, the exposition of the text should be considered as supposing knavery; therefore, when knavery is observed, the cause must be tried on the first plea; but if no knavery appear, it may be tried upon any of the pleas: such is the true sense of the text according to the *Retnácara*; and the production of the feller and the proof of a fair sale are not exclusively intended by the text.

Here it should be noticed, that when the cause is tried, if the
defendant

defendant be able to write, the judge should require all his pleas in writing, and a written declaration that he has no other plea: afterwards, should he offer another plea, he is evidently disposed to knavery. This we hold to be proper.

XXXVI.

MENU:—He who has received a chattel by purchase in open market, before a number of men, justly acquires the absolute property by having paid the price of it.

The place where things are sold (*vicriyantē*), is the market (*vicraya*): he who there buys a saleable commodity in the presence of persons transacting any business, thereby justly acquires the absolute property, justified by purchase from one who sells without ownership, because the seller receives the price from him. So CULLÚCABHATTA, who reads in the third measure of the verse, *visudd'ham hi* instead of *visudd'bah syāt*. He makes it evident that the word *vicraya*, formed on a suffix denoting locality, signifies a market. He considers this text as bearing the same import with the text of MARÍCHI (LV). “Received by purchase:” purchase *here* intends receipt of a thing for a price paid under the name of purchase.

It appears from this interpretation, that the buyer is not faultless if the purchase was made in any other place than an open market, and before credible persons, who are not officers employed by the king. But simple men thus interpret the text; “He who has received a chattel by sale, as the cause of receipt, before a number of respectable persons, is justified by the known open purchase, and legally acquires the property.” The suffix of the word *visuddha* is in the neuter sense. But, reading *visuddhatwam* instead of *visuddham hi*, the sense is obvious. In the text (LV), a place of trade is mentioned approximately; for sales and purchases can hardly be transacted any where but in a place of trade: and thence it is deduced, that a purchase secretly made, in a man's own house or the like, is defective. The word *cula*, signifying a number of persons of the same rank,

in this text conveys a limitation: consequently men equal in rank, being respected persons, are meant. The term is explained by AMERA, genus, or multitude of similar beings. It is used by accurate speakers in the sense of near neighbours. According to this opinion, a purchase any where made before respectable persons, is an open purchase; and there is no fault in the buyer. Consequently the meaning is this: neither the defect of a private purchase grounded on the want of evidence, nor the suspicion of having purchased the chattel knowing it to have been stolen, exists in the case of a purchase made before respectable persons; and, if a purchase made after registering the name of the feller and of his ancestors to the third generation, and his place of abode, be faultless, and not otherwise, then it is proper that the purchase should be made in the presence of the king's officers; and, the king's officers being stationed for the *government of the country* at large, it is proper, for the purpose of avoiding much trouble, that the purchase be made in a place where many purchases and sales are transacted, namely in a market. But no ordinance appears to prove this clearly. The difference between the two opinions should be fully examined by the wise.

CHANDÉSWARA reads, "he is justified by the purchase" (*sa visudd'has tu*), and explains the text (XXXVI) "he who receives a chattel in open market, before an assembly of respectable persons conducting judicial procedure, is legally justified by the purchase, and obtains the property *from the seller*." Consequently, according to his opinion, the rule does not direct the purchase to be made before the king's officers; for arbitrators, as well as officers employed by the king, conduct judicial procedure, since this term denotes the trial of causes: and the epithet of respectable would be superfluous, if king's officers were intended by CHANDÉSWARA in the expression "conducting judicial procedure;" for persons not respected are not appointed by the king to be his officers: their appointment would be useless, since such persons are not capable of conducting affairs. Neither is the superiority of king's officers, appointed for other business, above principal *Bráhmanas* and the like, consistent with the reason of the law; and the same sense is intended when persons conducting judicial procedure are mentioned, as when king's officers are specified.

Why

Why not rely on the derivation of the word in the sense of locality? This objection is not proper; for derivatives in this form, from words of this class, are regularly used in another sense. But if that derivative sense be admitted, in the apprehension of the word being otherwise superfluous, sale is inferred from what follows. Consequently, market is mentioned as an instance only: if a purchase be made before principal persons, there is no distinction, whether it be in a market, or in any other open place; and, according to this opinion, the text must be supplied, "he is legally justified by *the fairness of the purchase*." But practice, in some places, justifies any sale made in the midst of the town and in the presence of respectable persons.

It must be considered that the king's officers are few, and respectable persons are surely numerous in every town. Consequently, if it be directed that every sale be made in the presence of those few persons, they become in a manner acquainted with the sellers by frequently seeing them: but if made in presence of many different persons, these, being only now and then present at sales, do not become acquainted with the persons of sellers: therefore it is proper that purchases be made before the king's officers. If the king, considering this, forbid sales to be otherwise made; then, considering the king's command as cogent, this form should be observed, without questioning whether it be, or be not, ordained by the law; and if the business of buying and selling be not obstructed by this formality, then also it should be observed. To expatiate would be superfluous.

XXXVII.

YÁJNYAWALCYA:—The owner shall recover his property sold by a stranger: blame is imputable to the man who buys not publickly; and he incurs the guilt of a thief, if he buy from a very low man, in a secret place, at a very cheap rate, and at an improper time.

If the purchase be clandestine, blame is imputable to the buyer:
such

such is the construction. "If he buy from a very low man," &c. is a distinct phrase. CHANDÉSWARA thus comments on the text; "from a very low man," not likely to be the owner of that chattel: "at an improper time," not at the proper hours of sale. Consequently he who buys from a very low man, clandestinely, at a very cheap rate, disregarding *proper* time, is a thief: such is the sense of the phrase.

Is a purchase made under any one of those circumstances punishable as a theft, or a purchase made under all those circumstances? Not the first; for "in a secret place" would be superfluous, since the same results also from the preceding phrase; and even a purchase made before the king, at an improper hour, would be criminal. Not the latter; for a purchase made at a proper time, even though at a very cheap rate, from a very low man, and in a secret place, would be faultless. To the question thus proposed the answer is, this half of the text shows defects incident to purchase though proved; therefore each of the circumstances mentioned are causes of defect. "In a secret place, at an improper time," are distinguished: therefore a purchase made in the middle of the night, even in presence of the king's officers, is defective; for even those officers are not respectable, consenting to the sale of effects which they know to have been stolen. A secret purchase is therefore separately mentioned to denote such a distinction.

It must be considered, that there is no offence, if it be fully ascertained by five respectable persons, that the thing was given to this low man by some considerable person; and if urgent necessity be fully proved, there is no offence in a voluntary sale, even at a very low price; nor is there any offence on the part of the buyer, even though the purchase be made in the middle of the night, if the thing was thus sold from apprehension of the seller's kinsmen, but in the presence of honest and respectable persons; and even in the case of a purchase privately made, if the seller acknowledge the sale and the buyer's innocent intention, there is no offence. The king, from his own judgment, should apply to each case what agrees with the reason of the law; for, "if no decision were made according to the reason of the law, there might be a failure of justice."

XXXVIII.

NÁREDA:—He who buys any thing from a slave without authority from his master, from a man not of a good character, in private, at a very low price, and at an unfit hour, becomes an accomplice of the man who stole it.

If a slave intrusted with a chattel for transport or custody, having it in his power, sell it, he is a thief; and so is the buyer also: but if the owner authorize the sale, there is no offence. It must be considered, that, on whatever occasions (for the support of the family or the like) a debt contracted by a slave would be payable by his master, the sale of his master's property, for the same purposes, is valid. The expression "without authority from his master," intends a case not attended with such circumstances: and the same sense should be ascribed to the text of **MENU**; "*A contract made by a person without authority is utterly null*" (XI).

"Slave" is here employed in the general sense of any dependent person: therefore a purchase made from a son or the like, is defective; but if a man buy with the knowledge of the owner's having authorized the sale, there is no offence.

XXXIX.

CÁTYÁYANA:—The defendant, not clearly proving an open sale to him, or not pointing out the feller, shall be made to deliver the thing claimed and to pay a fine.

Justification of the purchase consists in the proof of an open sale. He shall be made to pay a fine, as a thief. In this case, the buyer is not justified: **MENU** propounds the fine which the king receives, as declared in the text of **YÁJNYAWALCYA** (XXIX).

XL.

MENU :— If indeed he be a near kinsman of the owner, he shall be fined six hundred *panas* ; but if he be neither his kinsman, nor a claimant under him, he commits an offence equal to larceny.

“ Shall be fined ” (*avahārya*), shall be amerced. “ A near kinsman of the owner himself ” (*swānwaya*) ; a son or other near relation of the owner, “ Six hundred ; ” *panas* must be understood. “ Not his kinsman ; ” not related to the owner. “ Not a claimant under him ” (*anapasara*) ; not having taken it by authority of a kinsman : the taking of it is the removal (*apasara*) of it from the house of the owner. Hence, he who sells the property of another, being related to him, shall be fined six hundred *panas* : but if that seller be neither related to the owner, nor become, through a kinsman of the owner, receiver of that chattel taken from the house of the owner, but himself be the taker of it, he shall be punished as a thief : if the embezzlement of the chattel be the act of another, and the seller be unallied to the owner, he shall be fined even in a larger sum than six hundred *panas*.

The *Retnācara*.

“ A fine ; ” an amercement of six hundred *panas*. He shall be fined ; a fine shall be levied (*avahārya*) on him. The etymology of the term *swānwaya* is, ‘ he in whom there is a relation (*anwaya*) with the owner himself (*swa*) ; ’ that is, a son, and so forth, including brothers and the rest ; for it is so declared by **CULLÚCABHATTA**. A seller, into whose hands the chattel had not been removed or transferred from the house of the owner by another who is kinsman of the owner ; such a seller, we say, not being related to the owner, commits an offence equal to larceny. If the sale of a chattel transferred into his hands by a son or other kinsman of the owner, be made by one not related to the owner, he shall be punished in another mode : on this a question arises, to satisfy which the commentator adds, ‘ if the embezzlement be the act of another, and the seller be unallied to the owner (for the sign of the privative “ a ” must be understood), he shall be fined even in a larger sum than six hundred *panas*. ’

By

By the particle ' even ' it is intimated, that a larger fine than six hundred panas is founded on the reason of the law. According to this opinion, the rule concerning a sale without ownership, by one unallied to the owner, is two-fold.

But the author of the *Calpateru* says, that by which a thing departs (*apasarati*) or is transferred, is a claim or title (*apasara*), as acceptance and so forth : he who has not such a claim or title, is not a claimant under the owner. If the property of another be sold, without acceptance of donation or other claim under him, by one not related to him, the seller shall be punished as a thief.

And this interpretation is approved by BHÁGURI, the *Méd'hātithi*, and the rest. MISRA also fully approves it ; and according to this opinion, the rule concerning sale without ownership, by one unallied to the owner, is single, and there is no distinction of embezzlement, or no embezzlement by a kinsman : however, the term " claimant under him," becomes superfluous according to this interpretation ; for if a man sell property obtained by acceptance of donation or the like, it is not sale without ownership, since the effects had become his property by the acceptance of donation. Considering this objection, the author of the *Retnācara* has approved another interpretation. CULLÚCABHATTA expounds the word *apasara*, acceptance, purchase or the like : he to whom no such title has been given by the son or other near kinsman of the owner, is not a claimant under him (*anapasara*). Consequently, he has nearly followed the opinion of the *Retnācara*. When the son or near kinsman of the owner is giver or seller, there is a ground of claim : even on the opinion of the author of the *Calpateru* and the rest, this interpretation may be adopted ; for, in answer to the question from whom accepted, the owner must not be assumed, but his son or near kinsman, else the term (*anapasara*) would be unmeaning ; and if a term can become pertinent, it should not be considered as a superfluous term, expressive of what is naturally inferred. Consequently, the opinions of all authors coincide.

The son, or other kinsman, who had given or sold the thing to the person who sells it again without ownership, shall be amerced ; for he causes the sale without ownership to be made. Or this is intimated by the author of the *Retnācara*, ' if the embezzlement

ment be the act of another, &c.' for, if a thing obtained by purchase from a kinsman who embezzled it be sold, the kinsman who first sold it to the *last* vender shall be fined six hundred *panas*; and it appears from the particle "even" or "also," that the seller, who had purchased it from a kinsman, shall be amerced.

It must be considered, that if a son or other kinsman, secreting any property, sell it through an intermediate person, the seller shall not be punished as a thief, but shall be amerced in six hundred *panas*, or the like: and the intermediate person, being in fact a substitute only, shall not incur the punishment of a sale without ownership, but receive severe reproof or other reprehension suitable to such improper conduct; but the man who sold the thing through an intermediate person, incurs the amercement mentioned.

XLI.

MENU: — By this rule shall that man be punished who ignorantly makes a sale without ownership; but if he knowingly do so, he is liable to the punishment of larceny.

Attributed by CHANDÉSWARA to MENU, but inserted by MISRA after the texts of MENU, premising the word "so." Is it not inconsistent with the following text, which, declaring innocent the sale of another's property inadvertently made, shows that there shall be no punishment?

XLII.

Matsya Purana: — That man who ignorantly sells the goods of another is free from offence; but if he knowingly do so, he is liable to the punishment of larceny.

CHANDÉSWARA explains free from offence, exempt from capital punishment, not exempt from amercement.

What

What is the meaning of the terms “by this rule” (XL)? MISRA replies: he who ignorantly sells the property of another, shall be punished with an amercement of six hundred *panas*; but he who knowingly sells another’s property, shall be punished as a thief, by mutilation and the like.

Shall the man who inadvertently sells the property of another be fined six hundred *panas*, whether he be a kinsman of the owner or not? Some hold, that a kinsman of the owner, who ignorantly sells property not his own, shall be fined six hundred *panas*; but knowingly selling it, he shall be punished as a thief: and if, not being a kinsman, a man ignorantly sell the property of another, he shall be punished as a thief; but if he wittingly sell it, the law knowing no greater punishment, he shall, in that case also, be punished as a thief: and the meaning of the text is, “by this rule, *that is*, by a pecuniary fine of six hundred *panas*, “and by the punishment of larceny, shall the kinsman and “stranger respectively be punished, if they ignorantly sell the “goods of another; but whoever knowingly sells the goods of “another, whether a kinsman or no kinsman, shall be punished “as a thief:” and the text of the *Matsya Purāna* relates to kinsmen; for a stranger is in all cases punished as a thief.

Others say the pronoun “this,” in the expression “by this rule,” referring to the subject of thought, intends a fine of six hundred *panas*; and the meaning is, that a stranger, inadvertently selling the goods of another, shall be fined six hundred *panas*; and the expression “he commits an offence equal to larceny,” supposes the wilful sale of another’s property: but a kinsman, whether ignorantly or knowingly selling the goods of another, shall be fined six hundred *panas*, for the law has not shown a less punishment. It cannot be objected, that there is no argument whereon to establish such a bad construction; for, on any other construction, the punishment would be disproportionate. Thus the very punishment which is due when a man seizes a thing in the night and so forth, knowing it to be the property of another, would be incurred by one who, keeping a deposit to oblige the owner, (and the chattel being placed with his own goods, and being similar in quantity,) sells that chattel which belongs to another. This would be highly inconsistent with common sense; and the text of the *Matsya Purāna* expressly declares, that there

is no offence. If it be said that text should be otherwise explained, they answer, can a capital punishment be proper in a case in which it is declared; in general terms, that there is no offence?

Others again say, the *Matsya Purāna* declares innocent the holder of a deposit or the like intrusted to him by the owner himself; but the punishment of a man who, finding another's chattel dropped on the road, sells it, thinking it his own, is mentioned by MENU: and this should be expounded in conformity with the opinion of others, because the seizure of a chattel dropped on the road is as it were a theft.

The best of these opinions should be selected by the wise; but one opinion only should be adopted. In such detail has punishment been mentioned for the case of a sale without ownership; and that punishment is only inflicted when the owner has proved his property.

XLIII.

CĀTYĀYANA:—The owner of a thing, which he loses, *and then finds*, shall recover it, if he prove by credible witnesses that it was his own, and that he never gave, sold, or otherwise aliened it.

“By credible witnesses;” by competent evidence. The word “abandoned” denotes sale, gift, or any other act annulling property. The *Retnācara*.

Consequently “abandoned” (the term used in the text) does not merely intend “neglected,” for in this place it may indicate any act annulling one's own property, and comprehend gift, sale or the like: gift and sale are repeated in like manner as one name of kine may denote cattle of that sort, and a synonymous term in the same sentence may intend cows only: therefore “abandoned,” (or aliened,) denotes also gain, conquest, and acceptance.

The person who had lost the thing shall recover it on showing that it is in fact his own, by proving that he neither gave, sold, nor otherwise aliened it. Or he shall recover it on proving that it was his own, and that he never gave, sold, or otherwise
aliened

aliened it. Consequently the order of procedure is this: first, on seeing his chattel in the possession of any person, he has claimed it, and the buyer has produced the seller; next, in a contest with the seller, let the owner prove his property, by showing that the thing was his own, and that he never aliened it. Let not the buyer contest the property, for VYÁSA directs that “the law-suit shall be continued between the owner of the thing lost and the seller” (XLIX): but if the seller be not forthcoming, the suit must be defended by the purchaser; as will be mentioned in another place.

XLIV.

CÁTYÁYANA:—But if such claimant prove not the thing to be his own by credible witnesses, he should be punished as a thief, for the sake of deterring *others* from making false claims.

“Credible witnesses;” mentioned approximately. Proof in general is meant. The *Retnácara* notices another reading, “if he prove it not by kinsmen;” which is explained as mentioned incidentally, intending proof in general: some, it says, read, ‘if he prove it not by credible witnesses;’ and the same meaning should be inferred. That is, credible witnesses indicate proof in general: the word (which literally signifies making known) does not merely intend witnesses making known *the fact*; but, taken in a secondary sense, with and without its primary sense, intends possession and other proof: for the purport is the same as in the text which will be quoted from YÁJNYAWALCYA (XLV).

“For the sake of deterring, &c.” to prevent repeated claims. Thus, being punished to prevent a repetition of the offence, he may not repeatedly prefer false claims: and, the claim itself being criminal, as often as he makes a claim, the truth of which he cannot establish, so often shall he be punished; since punishment for each claim is proper, as it is for repeated theft. Thus some expound the text.

XLV.

YÁJNYAWALCYA:—The right to a thing lost, *and then found*, must be proved by the mode of acquisition, or by *evidence of possession*; otherwise, on failure of proof, a fine equal to a fifth part of *its value shall be paid* to the king.

Let the owner of a thing which has been lost, and is found, prove his property by the mode of acquisition, (by purchase or the like,) or by *evidence of actual enjoyment*; otherwise, on failure of this and other proof, (that is, the property not being proved,) a fine equal to a fifth part must be paid to the king: this construction agrees with the gloss of the *Retnâcara*. The written contract of sale is evidence of a purchase, and so in other cases; but actual enjoyment, even without proving a purchase or the like, is presumptive evidence of property.

XLVI.

VRĪHASPATI:—The covetous man, who, without any right, claims the property of another, on failing in his proof, shall be compelled to pay a fine *equal to double the value of the thing claimed*.

This payment of a fine equal to double the value, supposes a claim covetously made, knowing the thing to be the property of another; but a fine equal to a fifth part of the value, as mentioned by YÁJNYAWALCYA, supposes a claim made by mistake: there is no contradiction. The *Retnâcara*.

What is the import of the words of CÁTYÁYANA, “he should be punished as a thief” (XLIV)? Some hold, that this repeats the punishment of theft. Thus, when a fine equal to double the value is mentioned, reference must be had to the text of VYÁSA.

VYÁSA:—The man who steals hollow canes, flowers,
roots

roots or fruit, shall be compelled to pay a fine equal to double their value, or an amercement of five *crishnalas*.

“Hollow substances ;” canes and the like. The word *crishnala* intends a quantity weighing a barleycorn. So the *Retnâcara*, in the chapter on Theft. The terms of the text of YÁJNYAWALCYA intend five times the value ; consequently, when a fine equal to five times the value is mentioned, reference must be had to the text of NÁREDA.

NÁREDA :—For *stealing vessels* made of wood, grass, or earth, bamboos and vessels made of bamboos, tendons, bones, or leather ;

2. Pot-herbs, esculent roots, fruits or flowers, milk or the like, or the produce of the sugarcane, salt, or oil ;

3. Victuals cooked, or *any thing* prepared for food, wine, boiled rice, or any cheap article ; the fine is five times the value of the thing stolen.

And so, for other things, the amercement must be understood to be the same with the fine in cases of theft. But this is not satisfactory, for it disagrees with the *Retnâcara*.

Others explain the text (XLV) differently. Let the owner of a thing lost prove his property by the mode of acquisition, or by evidence of prior occupancy. Therefore, if it be proved in another mode (that is by witnesses), or if it be not proved, a fine equal to a fifth part of the value shall be paid. Another case, *they say*, is mentioned by VYASA.

XLVII.

VYASA :—If the plaintiff prove not his loss by witnesses, he shall *in that case* be compelled to pay double its value ; and the purchaser is entitled to the thing.

They expound this text, "Let him not prove his loss by witnesses, &c." Let him prove his property in the thing which has passed from the right owner to another person; he should not prove his right by witnesses, but by other proof, as mentioned by YÁJNYAWALCYA. If he cannot prove his right in the mode ordained by YÁJNYAWALCYA, what is the consequence? The text declares, "he shall be compelled to pay, &c." and the purchaser is entitled to the thing; that is, the claimant loses the cause. But if he cannot bring witnesses, CÁTYÁYANA directs that he shall be punished as a thief (XLIV). It should not be objected, that, if the right owner be unable to prove his property by the mode of acquisition, why should he bring witnesses? Witnesses should be brought for the purpose of obtaining a mitigation of the fine: the king should take evidence to decide according to the honest disposition of the party. Thus the exposition given in the *Retnácara*, to reconcile the texts, is apposite: the text of YÁJNYAWALCYA (XLV) is applicable to the case of a claim made by mistake; and the texts of VYÁSA and VRĪHASPATI, to a claim made from a motive of avarice.

That is totally wrong. If witnesses be not adequate proof, how should the fine be mitigated, under those texts? If they be adequate proof, why should not the party be exempted from a fine, under those texts? And it contradicts the text of CÁTYÁYANA (XLIV), which shows that the owner shall recover a thing lost and then found, if he prove by credible witnesses that it was his own, and that he never gave, sold, or otherwise aliened it. The true interpretation of the law is this: he who cannot prove his right incurs punishment, because his offence is similar to larceny (XL and XLIV). Consequently he shall be punished as a thief (even though he have not actually taken the goods of another) if he make the attempt; for punishment is mentioned generally by CÁTYÁYANA. A distinction is declared by YÁJNYAWALCYA and VRĪHASPATI (XLV and XLVI), according to the different motives of the claim, mistake or avarice. The text of VYÁSA (XLVII) must be supplied with the words *if and in that case*: "if the plaintiff cannot prove his right by credible witnesses, he shall in that case be compelled to pay a fine equal to double the value of the thing claimed:" and this text, which relates to the case of a law-suit between the owner of

of a thing lost and the buyer, may, from parity of reasoning, be applied to a law-suit between the owner of the thing lost and the thief; therefore, in such a case, the supposed thief obtains the thing.

When the buyer cannot produce the seller, nor prove a fair purchase, he shall pay an amercement, as directed by the following text :

XLVIII.

CÁTYÁYANA :—The claimant should first prove his property by oral evidence; next, to clear himself, the buyer should prove a fair purchase by credible witnesses :

2. If he cannot produce the seller, let him even justify the purchase; and if the purchase be justified, he shall in no wise be blamed by the king.
3. Let him prove a publick purchase by honest and credible witnesses: there is no other mode propounded, divine or human*.

The order of proceeding should be nearly such. A man finding a thing in the possession of some person, claims it as his own; and the possessor alleges that he purchased it: in that case, if he can point out the seller, and the seller acknowledge the sale, the suit must be maintained against the seller, as above mentioned. But if he cannot point out the seller, then the claimant must prove his property by sufficient oral evidence; and the buyer must afterwards justify the purchase by credible witnesses, that is, he must prove the actual purchase. The buyer has a right to prove a fair purchase, if he cannot point out the seller; but if he point out the seller, he cannot afterwards offer proof of a fair purchase (XXXV 2). As this justification is of less force, the text proceeds, “if he cannot produce the seller, let him even justify the purchase” (XLVIII 2): the word “even” shows a distinct order of proceeding; if he cannot produce the seller, (if he cannot cause him to be apprehended,) let him justify the purchase, or

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* The text cited at V. 39, is again quoted in this place.

let him prove his purchase by credible witnesses. But if the seller, attending, do not acknowledge the sale, let the buyer compel an acknowledgement by the evidence of his own witnesses, who knew of his purchase; and this only is a true production of the seller: it is not sufficient that he merely point out the person of the seller.

Is not this inconsistent with the text of VYÁSA?

XLIX.

VYÁSA:—But if the seller be produced, the purchaser shall by no means be condemned; for then the law-suit must be continued between the owner of the thing lost and the seller.

It is not inconsistent; for this is proper, since the word 'law-suit' here denotes the suit promoted by the original owner of the thing to obtain his property. When a man claims a thing which has been purchased by any person, why should the buyer unnecessarily take the trouble of producing the seller? But when the owner proves his property by witnesses or otherwise, that trouble must be taken.

L.

MENU:—But if the vender be not producible, and the vendee prove the publick sale, the latter must be dismissed by the king without punishment; and the former owner, who lost the chattel, may take it back *on paying the vendee half its value.*

If the vender, being dead, or having gone to another country, cannot be apprehended, and the vendee prove the publick sale, he is not liable to punishment; he must be dismissed by the king; and the owner of the thing sold without ownership shall receive the chattel from the buyer.

CULLÚCABHATTA.

A distinction will be mentioned in respect of what shall be recovered.

Declaring

Declaring the mode of justification, CÁTYÁYANA says, "let him prove a publick purchase, &c." thus clearly excluding justification by any other mode; "there is no other mode," &c. Ordeal is not sufficient proof; but the sale must be proved by human testimony. Or the sense may be, "no other proof, divine or human, shall be admitted, except the evidence of witnesses." In the absence of the vender, a paper in the vender's own handwriting is no evidence, without witnesses. Is adverse possession for the space of twenty years, or the like, inadmissible proof? Say not, "be it so;" for that would be inconsistent with common sense. To this some reply, that the evidence of witnesses, as the mode of proof required from the owner of a thing lost, is only mentioned illustratively by YÁJNYAWALKYA; as proof by kinsmen, in the text of CÁTYÁYANA, also denotes generally proof of a title or of previous possession. It cannot be objected that a written document would be proof of right; for that is not admissible evidence in such a case. Neither can it be objected that there is a distinction in the exposition given in the *Retnâcara*, on the text of CÁTYÁYANA (XLIV); for that is otherwise explained by the same author.

But the author of the *Retnâcara*, expounding kinsmen as intending proof in general, says, 'if kinsmen, that is, witnesses, cannot be produced, other evidence may be brought.' It must be considered, that if ordeal be admissible proof, the mention of it is superfluous, since it would be comprehended in the general sense of the expression used in the text of CÁTYÁYANA. It cannot be objected, that it is only mentioned for the sake of the order in which different proofs are admissible; for ordeal is directed on failure of other proof.

Proof is declared to be by writing, by possession, or by witnesses: on failure of these several proofs, one of the several ordeals is ordained.

Human testimony cannot be postponed to ordeal; it would be contrary to common sense. Thus, some person having received the stolen property of another, and afterwards the true owner seeing it, the possessor pleads the purchase, and, to prove it, offers

a document in the seller's own handwriting ; in that case, it would become sufficient proof. In causes concerning loans and the like, the document must be verified by comparison with another document in the same handwriting : but here, without reference to the vender, a written document cannot be given in evidence ; yet the writing of a person residing at a distance would, when collated with another document in his handwriting, become evidence after the death of the writer. Nor can it be said that there is no difficulty in admitting a written document to be sufficient proof of property on the part of the owner of a thing lost, since the sale regards him ; and the evidence on both sides being equal, the proof fails. A document in the handwriting of a vender who resided in a distant country, is no evidence ; but if his residence be near, even his sons, acknowledging the sale made by their father, become witnesses. The word "there" shows, that secondary evidence, in neglect of the best evidence, is not admissible. It would contradict the legislator's own words : thus, if the word kinsman be used for proof in general, "there" also refers to proof. The meaning is, that if there be possible evidence, another mode of proof (that is, proof by ordeal,) shall not be admitted. What follows from the rule, that proof by ordeal is not admissible if there be evidence, must be well examined. Thus some interpret the law.

VRĪHASPATI :—Poison is the ordeal ordained where a thousand *pieces* have been stolen ; fire, where *the theft is* a fourth less, or *seven hundred and fifty pieces* ; water, where *it is* three-fourths less, or *two hundred and fifty pieces* ; and the balance, where half, or *five hundred pieces have been stolen*.

Ordeal being thus directed in case of an accusation of theft, and this being, in its effect, similar to a charge of theft ; therefore the opinion of **CHANDÉSWARA** is right. "There," &c. (XLVII 2), refers to witness, explained in the *Retnācara* evidence in general. As for what has been said, that if a man, alleging a written document in the seller's own handwriting, exhibit a document subscribed by a person whose residence is in a distant

distant country, then, a writing being no evidence, proof must be required; all that is futile, for it becomes evidence when the handwriting of the seller is proved; and here, if the handwriting be doubted, proof may be required: and if it be wished to prove the handwriting by comparison with another document, even in that case the writing may be so proved. This again is nothing to the purpose.

When neither party can adduce evidence, what shall be the decision? and when the buyer cannot justify the purchase by evidence, but the plaintiff proves his property, what shall be done? The law declares it, "the defendant not clearly proving, &c." (XXXIX). If the plaintiff say, "this metallick vessel contained a thousand pieces of silver belonging to me, restore me the vessel with the money," the vessel and the money must be restored, if the defendant cannot perform ordeal; but if he can disprove the money by ordeal or otherwise, the vessel only shall be restored. Thus some expound the law. But this is futile; for it is inconsistent with the practice of great persons. An exposition established in one case is applicable to another, unless there be a *sufficient* objection: under this maxim, the very rule delivered under the title of Loans and Payment (Book I, V. cxcix.) is proper in this case.

From this text, delivered under the title of Loans and Payment, it appears, that, much being claimed by the creditor from the debtor, so much only as is proved shall be recovered; and the same is proper even in this case. The expression being general, if it be received as applicable to the whole claim, then an unproved claim is surely null. It should not be objected, that the text is limited to the title of Loans and Payment by the use of the term *dhaní* (which commonly signifies creditor); for its literal meaning of owner is pertinent.

LI.

NÁREDA:—Let not the purchaser conceal the man from whom he purchased; on that man depends his own justification: if he act otherwise, his crime is held equal, and he shall suffer the same punishment.

If

If he act otherwise, if he conceal the vender, his crime is equal to the crime of the vender, and he shall suffer the same punishment: *that is, the punishment of larceny, to which the vender would have been liable.* The *Retnâcara*.

If the buyer be a near kinsman of the owner, shall the penalty be an amercement of six hundred *panas*, as directed for sale without ownership by a kinsman (XL); or shall he be punished as a thief? It is said, suspicion of theft being removed, if the vender be proved, although his person be concealed, there is no difficulty in saying, that the penalty for concealing his person shall be six hundred *panas*; but if the vender be not proved, the buyer appears to be the real thief, and shall be punished as such, even though he be a near kinsman. That, however, is not indicated by this text; but, a fine or *punishment* being directed by the text of CĀTYĀYANA (XXXVIII), it appears that he shall be punished as a thief, because his crime is equal to larceny.

What is the concealment of the vender? If it consist in not particularly mentioning that the thing was purchased through that person; why should the buyer do so? When he dishonestly buys the property of his own kinsman, from a stranger, at a low price, having been requested by the seller not to make known that it was sold by him; the buyer might in that case conceal the man from whom he purchased, through fear of forfeiting his friendship, or from some other motive. Or the word may be explained "the written contract;" and the sense may be, "let not the purchaser conceal the contract, &c." and the motive for concealing it may be the apprehension of making known the very low price at which the thing was bought.

How is it known that the contract is concealed? It is not ascertained by the mere omission of producing it, whereby a failure in justifying the purchase would imply wilful concealment: nor does it appear from the text of NĀREDA (LI), that the punishment of *larceny* is ordained for a simple failure in justifying the purchase; were it so, the offence would be equal whenever the purchase was not justified; but, this not being declared, the expression, "let not the purchaser conceal, &c." cannot be so applied. To this it is answered, if the buyer in the first instance produce the contract, and afterwards, defending the suit before other arbitrators, conceal it, in this and other cases concealment

is ascertained. In this case, if the purchase be proved, the purchaser, being a near kinsman, shall not be punished as a thief, but be fined six hundred *panas* for his offence in concealing the contract.

But, if the owner have no proof of his property; nor the buyer, of his purchase; the claimant loses the cause: for the purchase is *not* to be justified, *until* after the claimant has proved his property.

LII.

VRĪHASPATI: — In a suit where proof is deficient, the king must himself decide according to the equal, greater, or less credibility of the parties.

Employing spies in the manner mentioned under the title of Bailments, and thus ascertaining the equal, greater, or less honesty or dishonesty of the parties, the king must himself decide the suit. The *Retnâcara*.

The meaning is this: when a buyer, sued by the owner, has produced the feller; and, the suit being continued against the feller, both parties assert their own property in the thing, but neither have sufficient proof; in such a case this text is to be followed. The decision where both parties are equally credible, will be mentioned: if one party be less credible, he loses the cause, and the person whose credibility is greater gains it.

It is the business of a spy, assuming the appearance of a thief, or some *other* disguise, *such as that* of one employed in the service of a petty prince, to insinuate himself into the friendship of the man, and detect his conversation and conduct with his relatives. Sometimes the spy says, “to-day let us carry to a distant place, and sell this chattel which has been privately obtained;” and according to his answer his conduct is to be presumed. Wise kings, or their officers, may themselves adopt other modes.

According to this opinion, if neither party can adduce proof, their general conduct should be examined; and thus may the suit be decided: in other cases the general conduct even of witnesses should be examined; otherwise the king would be unjust, and
the

the loss would be equally borne by both parties whenever proof is deficient. This should be examined by the wife.

But MISRA holds, that if the purchase was publicly made, and the buyer cannot produce the vender, his place of abode being unknown, the buyer shall not be fined; for he is not criminal. Who then shall have the thing? Shall the owner have it, because his property is not annulled? or shall it remain in the buyer's possession until he receive the price? VRĪHASPATI says, in a suit where proof is deficient, if it be pleaded that there are not means of ascertaining the vender's place of abode; (if the buyer say, "I know not where the seller is;") the king must decide according to the equal, greater, or less credibility of the parties: the loss must necessarily be borne by both parties, according to their respective characters.

What decision shall be given? The same legislator propounds it:

LIII.

VRĪHASPATI:—If a purchase be made before a publick assembly of traders, with the knowledge of the king's officers, but from a seller whose dwelling-place is unknown; (or if a claim be made after the death of the seller, *though known*;)

2. The owner of the thing may recover his own property, on paying half the price given; half the value is lost to each of them: such must be the decision.

"Before a publick assembly of traders;" meaning generally a market or the like. "With the knowledge of the king's officers;" officers appointed by the king for that purpose: this also is a general expression. "From a seller whose abode is unknown;" from one whose dwelling is not well known. So the *Retnâcara*.

In the case of a private purchase, the buyer must restore the thing to the owner without receiving back the price, as already mentioned.

How

How can the buyer be entitled to half the price, according to the opinion of 'SÚLAPÁNI; since the owner's property in effects stolen is not annulled, and the owner has not received the price? But, according to the opinion of VÁCHESPATI BHATTÁCHÁRYA, the buyer receives no part of the price, since the sale is null, as a sale without ownership, although the thief's property in the thing have been transferred; or he is entitled to the whole price, because he has property in the thing.

LIV.

VRIHASPATI:—A purchase from an unknown feller is one fault; negligence in keeping the thing is another: and these two faults are to be considered as just causes of loss to each.

By mentioning that both are in fault, it is meant that equal loss is the punishment of both faults. Thus, according to 'SÚLAPÁNI, although the owner's property in the thing was not annulled, he pays half the price, on account of his fault in neglecting the custody of the thing; and the buyer loses half the price, on account of the slight offence of buying from an unknown vender.

According to this opinion, is not the half price received back by the buyer an excessive advantage? He does not receive half what remains above the loss; for the thief, not the owner, received the price from him: consequently the loss of the chattel received from the thief is the actual loss; and what the buyer receives from the owner becomes his gain, since the owner had no concern in the sale: what is given by the owner, ought therefore to be taken by the king as a fine. To this it is answered, since it is not fit that the king should receive the fine for the fault of neglecting the custody of the thing; and since the payment of it is necessary under this text; and since it is also necessary that the buyer should receive it from some person; the king shall cause it to be paid to him. "The king should himself decide, &c." (LII). Therefore, although it might not accord with general reasoning, the buyer shall receive half the price with the approbation of a king who governs according to law.

According

According to the opinion of VÁCHESPATI BHATTÁCHÁRYA, there is no difficulty: the full property is revived, where the seller is known, by the mere production of the seller: but in this case, full property is revived after paying half the price; and the buyer is not entitled to receive the whole price, because there has been a fault on his part.

LV.

MARÍCHI:—If a purchase be made by day before a publick assembly of traders, with the knowledge of the king's officers, the purchaser is justified, and acquires the absolute property.

2. But if he cannot produce the seller, his dwelling-place being unknown, the loss shall be borne equally by the buyer, and by the *former* owner who had lost the thing.

“His dwelling-place being unknown,” or it being uncertain whether he be alive or dead: the expression is general. If the property be not proved, what shall be the decision in the suit between the owner and the thief? The same; for both are equally in fault: and the *Retnácara* so expounds the text.

LVI.

VISHNU:—There is no crime in him who ignorantly buys *from a stranger* the goods of another: but the owner shall recover his property.

On paying half its price must be supplied in this rule: thus it does not relate to private purchases; if it did, it would be improper to say that a buyer should be acquitted without proof of a fair sale, though suspected of theft: but, referring the rule to an open purchase, it coincides with the text of VRĪHASPATI (LIII), and fitly shows that the property shall be recovered on paying half the price. It cannot be said that no fine is incurred if

if a sale privately made be any how proved ; but the owner shall recover his property without paying any part of the price : and in the case of a fair sale, the proper decision is that which is mentioned by VRĪHASPATI (LIII). A sale proved, partakes of the nature of a fair sale.

MISRA says, some purchases, though made from the owner himself, are questionable : and the rule of decision is the same as in Sale without ownership.

LVII.

VRĪHASPATI :—There is no fault in the man who purchases a thing at a fair price, delivered by the owner in *the presence of credible persons* ; but a fraudulent purchaser is a thief :

2 A fraudulent purchase is declared to be that which is made at a very low price, in a private apartment, in a place out of the town, by night, in a situation where the bargain cannot be overheard, or from a man not known to be honest.

Delivery by the owner in the presence of credible persons : the text must be so supplied. By the subsequent phrase, “ a fraudulent purchaser is a thief,” which is expounded, purchasing in the recesses of a house, it must be understood, that a fair purchase is made in a place fit for such transactions : a very low price being mentioned in the subsequent verse, “ price ” in the first verse signifies a fair price. Accordingly, if a man buy a thing at a very low price, even from the owner himself, whom he has brought to his own house in the night, and whom he has deceived, he is criminal, and shall be punished as a thief. But there is no offence in a sale voluntarily made, at a low price, by an indigent man, with the approbation of great persons : and such is the practice.

What is the rule concerning traders who give a little grain or the like to indigent persons distressed for subsistence and applying for a loan, and who take a writing for the debt at a high valuation,

valuation, or who receive a very high price for a scarce and necessary article? Is the contract legal or not? The question is answered, as in the title of Loan and Payment: under the text of **CÁTYÁYANA** (Book I, v. XXXVII 1), interest voluntarily promised must be paid; but if the promise have been extorted by force, such interest shall not be paid: so, in this case, a price or the like, voluntarily agreed on, stands good; but if consent have been extorted, it does not stand good. For example, a man, distressed to provide for his father's obsequies, wishes to sell his own furniture; but, not readily finding a purchaser, applies to some person, saying, "assist my occasions;" the other, hearing all the circumstances, replies, "this is your purpose, but I desire gain;" and the vender rejoins, "I know that my purpose must be accomplished by you at the expense of your own wealth; I am fully satisfied to sell at a low price:" in such a case there is no offence in buying at a low price. But, should he, being of a harsh disposition, and desirous of purchasing the thing at his own price, offer to a man, who cannot go elsewhere, half the price at which such things are sold on all sides, and bid him go where he pleases *if he will not take that price*; in that case a purchase at such a price is not valid: and the same must be understood of fixing an excessive price, according to the circumstances of each case. But there is no offence in traders who keep a store of commodities for a long time, if they receive a high price, voluntarily paid for a scarce article: there is offence in obtaining a high price by deceit, harshness, or the like. All this is stated as resulting from the reason of the law, on the exposition of the text as delivered by **MISRA**: it should be examined by the wise.

CHANDÉSWARA, inserting this text among those which show sale without ownership, says nothing expressly regarding it. After the text of **VISHNU** (LVI) he inserts the following text:

LVIII.

NÁREDA:—An open purchaser is clear of imputation, but a purchase in secret is a theft.

After this text, inserting the text of **VRĪHASPATI** (LVII), he subjoins

subjoins the text of NÁREDA (XXXVIII) as expounding the sense of the preceding text. If the text of VRĪHASPATI (LVII) relate to sale without ownership, the sense is this ; “ delivered by a person pretending to be the owner.” The term (*adhyacsha*) signifies one capable of such transactions as sale and the like. Civil contract is among the senses of *acsha* in the Dictionary of AMERA. According to this interpretation, “ from a man not known to be honest ” (*asatab*), so expounded by CHANDÉS-WARA, is pertinent in the literal sense of the terms. It is mentioned to intimate that there is no offence, if the man, though in fact a thief, have the appearance of being no thief. But, according to the opinion of MISRA, it means, from a person not praised or revered, that is, from an infant or the like. AMERA mentions praised among the senses of *sat*. Or fraudulent purchase is here described generally,

LIX.

YÁJNYAWALCYA :—He who shall receive from the hand of a stranger, what had been taken from him, or what he had lost, without giving notice to the king, shall be fined ninety-six *panas* of copper.

He who receives it, without giving notice to the king that his property had been taken away by that person, shall be fined ninety-six *panas* ; for he is guilty of concealing a thief.

The *Retnácara*.

He shall be fined, because he deprives the king of his due.

MISRA.

A fine is due from the thief to the king. Thus both glosses agree. A fine has been declared in the case of a sale of lost property by a stranger ; consequently there is nothing incongruous.

Is there no offence in selling a waif ? There is if it be sold within the space of three years, but not if it be sold after that term ; for it is proper that another should observe the same rule which is prescribed to the king.

LX.

MENU :—Three years let the king detain the property, of which no owner appears, *after a distinct proclamation*: the owner, appearing within the three years, may take it; but, after that term, the king may confiscate it.

2. He who says, “this is mine,” must be duly examined; and if, *before he inspect it*, he declare its form, number, and other circumstances, the owner must have his property;
3. But if he show not at what place and time it was lost, and specify not its colour, shape, and dimensions, he ought to be amerced.

It must be noticed, that if the owner, showing the time and place, and so forth, claim the thing even after three years, he may recover it, provided he had not neglected it. However, by the text of MENU, there is no offence in selling it after that term, if it be not claimed. Accordingly, since a waif is to be taken by the king, a man shall be punished if he appropriate it without acquainting the king.

LXI.

MENU :—One commodity, mixed with another, shall never be sold *as unmixed*; nor a bad commodity, as good; nor less *than agreed on*; nor any thing kept at a distance, or concealed.

Goods dyed with saffron and the like, mixed with goods dyed with safflower and similar drugs, shall not be sold *as unmixed*; nor a bad commodity as good; nor less than the weight agreed on; nor a thing which is at a distance; nor goods which have lost their colour: this being similar to a sale without ownership, the punishment shall be the same.

CULLÚCABHATTA.

What quantity shall be taken to determine the proportion of punishment similar to that of larceny? It is said, so much as is the proportion of the inferior commodity mixed with another; or, computing the price of good and bad commodities, so much as is the gain by selling a bad commodity at the price of a good one, and similarly in other cases: for there is no theft in regard to the other portion of the sale.

The law of sale without ownership being extended to this case, the fine for a kinsman is six hundred *panas*. It must be considered, in the case of sale without ownership, that if a trifle be sold by a kinsman, the fine should not be six hundred *panas*: for this would be disproportionate. Where the fine for theft would be six hundred *panas*, he should pay the same; and it is the limit of his amercement: but where the fine for theft would be less, he should pay the same fine as a thief: and let it not be objected, that there is no argument whence to deduce whether six hundred *panas* be intended as a less or greater amercement than the fine for theft; it is proper that the fine be less, since a kinsman is entitled to the use of the property.

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Jagannātha

A digest of Hindu law, on contracts and successions

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